Every person convicted of any felony, save murder, and admitted to the benefit of his clergy, shall be marked with a T. upon the brawn of his thumb. Stat. 4 H. 7. c. 13. See title Clergy, Benefits of, I.

Tabard, Tabarder; The bachelor scholars on the foundation of Queen's College, Oxford, are called Tabiters or Tabarders; and these scholars were named Tabiters, from a gown wore by them, called a Tabert, Tabitars or Tabarders; and these scholars, of such in Germany and other countries, which, with the Testonius and Saxen Taber, signify all a kind of garment, &c.

Tabardum, A garment like a gown, and used for an herald's coat, but generally taken for the gown to Bishops, Paris, mo.


Table-Rents, redditus ad mensam. Rents paid to Bishops, &c., reserved and appropriated to their Table or house-keeping. See Bard-land.

Tabling of Fines; See title Fine of lands, I. 1.


Table-rents, redditus ad mensam. Rents paid to Bishops, &c., reserved and appropriated to their Table or house-keeping. See Bard-land.

Tactare, For confirmare. Elia, lib. 2. c. 61.

Tail; Fee-tail.

Fedum Taliatum, from the Fr. tailier to cut, either because the heirs general are by this means cut off; or because this estate is a part cut out of the whole. See title Tenure; III. 6.

An estate in tail is a limited Fee, as opposed to a Fee-simple: it is that inheritance wherein a man is feated to him and the heirs of his body, begotten or to be begotten; limited at the will of the donor. He that gives lands in tail, is called the Donor; and he to whom the gift is made, the Donee. Litt. § 18. Estates in fee-tail are the (comparatively modern) offspring of the conditional Fees at Common Law. Before the statute de densis, if lands were given to a man and the heirs of his body, it was interpreted to be a Fee-simple; and by the statute de densis, the will and intention of the donor is to be observed; as that the tenant in tail shall not alien after issue had, or before, or forfeit or charge the lands longer than for his own life, &c. and the estate shall remain to the issue of the donee, or to the donor or his heirs, where there is no issue; so that whereas the donee had a Fee-simple before, now he has but an Estate-tail, and the donor a reversion in Fee expectant upon that Estate-tail. Co. Litt. 19. See post. III.

In this place, without further entering into the origin of these estates, (for which fee title Tenures, above referred to,) we shall consider,

I. What thing may or may not be entailed, under the Statute Donis: Westm. 2. (13 E. 1. st. 1.) 1.

II. The several Species of Estates: Tail: And further, how they are respectively created.

III. The Incidents to an Estate-tail: And the Effect of the various Statutes relating thereto.

I. Tenements is the only word used in the statute; and this word expounds to comprehend all corporeal hereditaments whatsoever; and also all incorporeal hereditaments which favour of the realty, that is, which issue out of corporeal ones, or which concern, or are annexed to, or may be exercised within the same; as rents, escheats, commons, and the like. 1 Eft. 19. 20. Also offices and dignities, which concern lands, or have relation to fixed and certain places, may be entailed. 7 Rep. 33. But mere personal chattels, which favour not at all of the realty, cannot be directly entailed. Neither can an office, which merely relates to such personal chattels; nor an annuity, which charges only the person, and not the lands, of the grantor. But in these last, if granted to a man and the heirs of his body, the grantee hath fill a Fee conditional at Common Law, as before the statute; and by his alienation (after issue born) may bar the heir or reversioner. 1 Inf. 19. 20. An estate to a man and his heirs for another's life cannot be directly entailed: For this is strictly no estate of inheritance, and therefore not within the statute de densis, 2 Vern. 235. Neither can a copyhold estate be entailed by virtue of the statute; for that would tend to encroach upon and restrain the will of the Lord: But, by the special custom of the manor, a copyhold may be limited to the heirs of the body; for here the custom acertains and interprets the Lord's will. 3 Rep. 8.

If a term for years, or any personal chattel, (except an Annuality, fee that title, and title Rents,) be granted or devised by such words as would convey an Estate-tail in real property, the grantor or devisee has the entire and absolute interest, without having issue; and as soon as such interest is vested in any one, all subsequent limitations, of consequence, become null and void. 1 Bro. C. R. 274. 1 Inf. 20: Pearse. See post.

Two things seem essential to an entail, within the statute de densis. One requisite is, that the subject be land,
TAIL; or
FEETAIL, I. I1.

or some other thing of a real nature. The other requisite is, that the estate is an inheritance. Therefore neither estates per autre vie in lands, though limited to the grantee and his heirs during the life of effu qui vivit, nor terms for years, are entailed by any more personal chattels; because, as the latter, not being either interests in things real, or of inheritance, want both requisites; so the two former, though interests in things real, yet, not being also of inheritance, are deficient in one requisite.

However, estates per autre vie, terms for years and personal chattels, may be so settled as to answer the purposes of an entail, and be rendered unalienable for almost as long a time, as if they were entailed in the strict sense of the word. Thus estates per autre vie may be devized or limited in strict settlement, by way of remainder, like estates of inheritance; and such as have interests in the nature of Estates-tail may bar their issue, and all remainderers over, by alienation of the estate per autre vie, as those who, strictly speaking, tenants in tail may do by fine and recovery; but then the having of issue is not an essential preliminary to the power of alienation, in the case of an estate per autre vie, limited to one and the heirs of his body, as it is in the case of a conditional fee, from which the mode of barring by alienation was evidently borrowed.

The manner of settling terms for years and personal chattels is different from the above; for in them no remainder can be limited; but they may be entailed by Executory Devises, or by deed of trust, as effectually as estates of inheritance; if it is not attempted to render them unalienable beyond the duration of lives in being, and twenty-one years after, and perhaps, in the case of a polibhumous child, a few months more. A limitation of time, not arbitrarily prescribed by our Courts of Justice, but wisely and reasonably adopted, in analogy to the case of freeholds of inheritance, which cannot be so limited by way of remainder, as to postpone a complete bar of the entail by fine or recovery for a longer space.

It is also proper to observe, that in the case of terms of years and personal chattels, the very visiting of an interest, which in reality would be an Estates-tail, bars the issue and all the subsequent limitations as effectually as fine and recovery, in the case of estates entailed within the statute de eius, or a simple alienation in the case of conditional fees and estates per autre vie; and further, that if the executory limitations of personalty are on contingencies too remote, the whole property is in the first taker.

Upon the whole, by a series of decisons, within the two last centuries, and after many struggles, in respect to personalty, it is at length settled, that every species of property is, in substance, equally capable of being settled in the way of entail; and though the modes vary according to the nature of the subjects, yet they tend to the same point, and the duration of the entail is circumscribed almost as nearly within the same limits as the difference of property will allow.

As to the entail of estates per autre vie, see 2 Vern. 184, 225; 3 T. Wint. 202; 1 Atk. 274; 2 Atk. 295; 376; 3 Atk. 464, and 2 Kist. 581. As to the entail of terms for years and personal chattels, see Manning's case, 8 Co. 94; Lampitt's case, 10 Co. 46, b; Child v. Baily, W. Ja. 15; 11.

Duke of Norfell's case, 3 C. C. 1. — See also Carth. 167; 1 P. Wms. 1. And, on the whole subject, Fearns's Essays on Contingent Remainders and Executory Devises; &c. 1 Inf. 20, m. m.

II. Estates-tail are either general or special.

Tail-general is where lands and tenements are given to one, and the heirs of his body begotten, which is called Tail general, because, how often soever such devise in Tail be married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the Estates-tail, per formam dni. Litt. §§ 4, 15.

Tenants in Tail-special are where the gift is restrained to certain heirs of the donor's body, and does not go to all of them in general. And this may happen several ways. One is, where lands and tenements are given to a man, and the heirs of his body, on Mary his now wife to be begotten: Here no issue can inherit, but such special issue as is engendered between them two; not such as the husband may have by another wife; and therefore it is called Special Tail. And here we may observe, that the words of inheritance (to him and his heirs) give him an estate in Fee; but they being to be by him begotten, this makes it a Fee tail; and the person being also limited, on whom such heirs shall be begotten, (viz. Mary his present wife,) this makes it a Fee-tail-special. See Litt. §§ 16, 27, 28, 29.

Estates, in general and special Tail, are farther diversified by the distinction of sexes in such entails; for both of them may either be in Tail-male or Tail-female. As if lands be given to a man, and his heirs male of his body begotten, this is an estate in Tail-male-general; but if to a man and the heirs female of his body on his present wife begotten, this is an estate in Tail-female-special. And, in case of an entail-male, the heirs female shall never inherit, nor any derived from them; nor a conveyer, the heirs male, in case of a gift in Tail-male. Thus, if the donee in Tail-male hath a daughter, who dies leaving a son, such son as is begotten in this case cannot inherit the Estates-tail; for he cannot deduce his descent wholly by heirs male.

Litt. § 24. And as the heir-male shall convey his descent wholly by males, so must the heir-female wholly by females. And therefore if a man hath two Estates-tail, the one in Tail-male, and the other in Tail-female; and he hath issue a daughter, which daughter hath issue a son; this grandson can succeed to neither of the estates: For he cannot convey his descent wholly either in the male or female line. 1 Inf. 25.

There are other Estates-tail within the equity of the statute; as if lands are given to a man and his heirs, males or females, of his body begotten; the issue male or female shall only inherit according to the limitation. By virtue of the statute, here the daughter may be heir by descent, though there be a son. But in the case of a purchase, Lord Coke says, there cannot be an heir-female where there is a man who is right heir at law. 1 Inf. 24, 164. But this doctrine is now dilipated, if not overruled. See title Heri. II. ad fin. And where there is no heir to take according to the gift, as when issue fails, the land shall revert to the donor, or descend to him that is to have it after the Estates-tail is spent. 1 Inf. 25.

As the word Heirs is necessary to create a fee, so in farther limitation of the strictness of the feudal donation, the
TAIL; OR FEE-TAIL, II.

The word Heirs is necessary to create an Estate-tail and inheritance by deed; and where an use was limited to A. B. and to his heirs male, lawfully to be begotten; these last words imply that it must be heirs male of his body, because no other heir male can inherit by virtue of his grant, but such who are lawfully begotten by the grantor. 7 Rep. 41. If a man makes a feoffment to the use of himself for life, remainder to the heirs of his body, this is an Estate-tail executed in him; and so it is if he covenanted to stand feised in the same manner. 1 Mod. 159.

By a marriage settlement and fine levied, &c. to the use of the husband and wife, for their joint lives; remainder to the heirs of the body of the wife by the husband to be begotten, remainder (the wife surviving the husband) to her for life, remainder to the right heirs of the husband: This was held to be an Estate-tail, executed in the wife. Raym. 17:3 Selb. 338. Land is conveyed to the use of a man and his wife for their lives, and after to their next issue in Tail, then to the use of the husband and wife, and of all their bodies begotten, they having no male issue; by this conveyance, husband and wife are tenants in special Tail executed, and when they have issue male, they will be tenants for life. remainder to their son in Tail, the remainder to them in special Tail. 1 Inst. 28.

Where a person having an estate in fee, conveys it by lease and release to the use of himself for life, with remainder to trustees for their lives, and remainderer to the heirs of his body; he hath an Estate-tail in him; but he is only tenant for life in possession; it would be otherwise if there had been no intermediate estate in the trustees for their lives. 2 East. Raym. 853. A man seised of land in fee, makes a gift of it in Tail, or lease for life, remainderer to the right heirs male of the body of the donor; this remainderer, it is said, will be a fee simple, and not an Estate-tail. Dyer 156. See title Remainderer. If the gift or grant of the land be to J. S. and his heirs, to hold to him and the heirs of his body, &c. here he will have an estate in Tail, and a fee simple upon it. Lit. 21. Lands are given to two brothers, &c. and to the heirs of their bodies begotten; during their lives they shall have joint estates, so that the survivor will have all for his life; and, after their deaths, their heirs have estates in general Tail, by moieties in common with one another. 1 Inst. 25:1 Rep. 140.

When a remainderer is limited to two, and the heirs male of their bodies, they have not joint but several Estates-tail: And between baron and feme, it is said, several moieties may be of an Estate tail, as well as of a fee simple. Cro. Eliz. 220:2 Moore 218:2 Lit. Abr. 551. A feoffment was made to the use of the feoffor for life, remainderer to W. R. his son and his heirs; and for want of issue of him, remainderer to the right heirs of the feoffor adjudged, W. R. hath only an estate in Tail; for though the first words of the sentence, viz., to his son and his heirs, make a fee simple, the subsequent words in the same sentence, i.e. and for want of issue of him, make an Estate-tail, by qualifying and abridging the same. 4 Mod. 266:3 Selb. 337. See Hals. 57: Dyer 534; and this Dict. title Remainderer.

If a person gives land to A. for life, and after his death without issue, then to another person; though there is an express
express estate for life given to A. the subsequent words make an Estate-tail. But where lands are devised to A. during life, the remainder to trustees, remainder to his first son, &c. and if A. dies without issue, then, &c.; the limitation upon the devisee's death, it is said, will not give an estate in Tail to A. but it shall be here intended, that if he died without having a son.

1 P. Wms. 605. A father, having two sons, devised his lands to his youngest son, and if he died without heirs, then to his eldest son and his heirs; the youngest son had an Estate-tail, because the devisee to him, and if he died without heirs, is the same as if the testator had devised it in these words, viz. If he die without heirs of his body; for otherwise the remainder limited to the eldest son had been void, as the youngest son cannot die without heirs, so long as the eldest is living. 1 Rel. Abr. 836. See title Remainder; Executory Devise.

In ejectment the case was, the father, having three sons, devised his lands to his second son, and his heirs for ever; and for want of such heirs, then to the right heirs of the father; then the father died, and his second son entered, and died without issue, living the eldest son. It was argued, that the second son had but an Estate-tail, and that the devisee over these words: and the words “for want of such heirs,” is void in point of limitation, for the testator's intent was that the lands should descend from him, not from his second son; and the words “for want of such heirs” could import no other than want of issue, &c. so that the eldest son takes by descent in this case, and not by the will. 1 Salk. 233. See title Executory Devise.

A person devised land to his wife for life, remainder to his son, and his heirs for ever; and if he died without heirs, the same to remain to his two daughters: In this case it was held in Equity, that the rule is, where a remainder over is to one, who may be the devisee's heir at Law, such limitation will be good, and the first construed an Estate-tail; for the generality of the word Heirs shall be restrained to heirs of the body, since the testator could not but know that the devisee would not die without an heir, while the remainder-man, or any of his issue, continued: But where the second limitation is to a stranger, it is merely void, and the first is a fee-simple. Talbot's Chan. Ca. 2. See title Remainder.

There is also another species of entail'd estates, now indeed grown out of use, yet still capable of subsisting in Law; which are estates in libero maritaggio, or Frank-marriage. These are defined to be, where tenements are given by one man to another, together with a wife, who is the daughter or cousin of the donor, to hold in Frank-marriage. Litt. § 17. Now by such gift, though nothing but the word Frank-marriage is expressed, the donees shall have the tenements to them, and the heirs of their two bodies begotten; that is, they are tenants in special Tail. For this one word, Frank-marriage, does ex eo termini not only create an inheritance, like the word Frank-marriage, but likewise limits that inheritance; supplying not only words of descent, but of procreation also. Such donees in Frank-marriage are liable to no service but fealty; for a rent reserved thereon is void, until the fourth degree of consanguinity be past between the issue of the donor and donee. Litt. §§ 19, 20. See title Frank-marriage.
T A I L

Recoveries, in the compass of about three score years, towards unfettering these inheritances, and thereby subjecting the lands to forfeiture, the rapacious Prince then reigning, finding them frequently re-settled in a similar manner to suit the convenience of families, had addressed enough to procure a statute. (36 Hen. 8. c. 13.) whereby all estates of inheritance (under which general words Estates-tail were covertly included) are declared to be forfeited to the King upon any conviction of High Treason. 2 Comm. c. 7.

The next attack which they suffered in order of time, was by Stat. 32 Hen. 8. c. 28, whereby certain leases made by Tenants in Tail, which do not tend to the prejudice of the issue, were allowed to be good in Law, and to bind the issue in Tail. See title Lease II. But they received a more violent blow, in the same session of Parliament, by the construction put upon the statute of fines, (4 H. 7. c. 24.) by Stat. 33 Hen. 8. c. 36; which declares a fine duly levied by Tenant in Tail to be a complete bar to him and his heirs, and all other persons claiming under such entail. This was evidently agreeable to the intention of Henry VIII. whose policy it was (before Common recoveries had obtained their full strength and authority) to lay the road as open as possible to the alienation of landed property, in order to weaken the overgrown power of his Nobles. But as they, from the opposite reason, were not easily brought to consent to such a provision, it was therefore couched, in his act, under covert and obscure expressions. And the Judges, though willing to believe that statute as favourably as possible for the defeating of entitled estates, yet hesitated at giving fines so extensive a power by mere implication, when the statute De Dono had expressly declared, that they should not be a bar to Estates-tail. But the statute of Henry VIII, when the doctrine of alienation was better received, and the will of the Prince more implicitly obeyed than before, avowed and established that intention. Yet, in order to preserve the property of the Crown from any danger of infringement, all Estates-tail created by the Crown, and of which the Crown has the reversions, are excepted out of this statute. And the same was done with regard to Common recoveries, by Stat. 34 & 35 Hen. 8. c. 26, which enacts, that no leigned recovery had against Tenants in Tail, where the estate was created by the Crown, and the remainder or reversion continues still in the Crown, shall be of any force and effect. Which is allowing, indirectly and collaterally, their full force and effect, with respect to ordinary Estates-tail, where the royal prerogative is not concerned. 1 Inst. 372: 2 Comm. c. 7.

Lastly, by Stat. 33 Hen. 8. c. 36, § 75, all Estates-tail are rendered liable to be charged for payment of debts due to the King by record or special contract; as fines, by the Bankrupt Laws, they are also subjected to be sold for the debts contracted by a bankrupt. See Stat. 21 Stat. 1. c. 10; and this Dict. title Bankrupt, And, by the construction put on the Stat. 43 Eliz. c. 4, an appointment by Tenant in Tail of the lands entailed, to a charitable use, is good; without fine or recovery. See title Charitable Uses.

Estates-tail, being thus by degrees unfettered, are now reduced again to almost the same state, even before issue born, as conditional fees were in at Common Law, after the condition was performed, by the birth of issue.

AFTER POSSIBILITY, &c.

For, first, the Tenant in Tail is now enabled to alien his lands and tenements by fine, by recovery, or by certain other means; and thereby to defeat the interest as well of his own issue, though unborn, as also of the reversioner, except in the case of the Crown. Secondly, he is now liable to forfeit them for High Treason: And, lastly, he may charge them with reasonable fees, and also with such of his debts as are due to the Crown on specialties, or have been contracted with his fellow-freight in a course of extensive commerce. 2 Comm. c. 7.

An Estate-tail cannot merge by the accession of the fee-simple to it: But it has been adjudged, that two fees immediately expectant upon one another, (as where a man is Tenant in Tail, and remainder in fee to the Tenant in Tail,) cannot subsist in the same person; and the statute De Dono having made Estates-tail a kind of particular estates, they must, like all other such estates, be subject to merger and extinguishment, when united with the absolute fee. 8 Rep. 47; 1 Salk. 328. If there be Tenant in Tail, remainder in Tail, and Tenant in Tail enfeoffs the reverfioner in fee, it is a dischaunce: And Tenants in Tail can make no greater estate than for their own lives, unless it be by leafes, &c. according to the Stat. 32 Hen. 8. c. 28: & Rep. 147.

If Tenant in Tail bargain and sell lands to another, and his heirs, or make a lease and release to the use of himself for life, with remainder over to another, &c, these estates may be avoided by entry of the issue in Tail, 7 Mart. 23, 28. Estates-tail are usually created upon settlements: Though an agreement to entail is not entail; for no agreement shall bind the issue in Tail, where there is a final entail, without Fine, Ch. 25 Rep. 275.

TAIL AFTER POSSIBILITY OF ISSUE EXTINCT.

Is where lands and tenements are given to a man and his wife in Special Tail, and either of them dies without issue had between them, the survivor hath an estate in Tail after possibility of issue, &c. Also if they have issue, and the issue dies without issue, whereby there is none left who may inherit by force of the entail, the survivor of the donors has an Estate-tail after possibility. Litt. § 32. The estate of this tenant must be created by the act of God. a viz. by the death of either party without issue; none can have this estate but one of the donors, or a donee in Special Tail; for a donee in General Tail may by possibility have issue. Litt. § 32: 1 Inst. 28: 1 Rep. 80. And if one gives lands to a man and his wife, and the heirs of their bodies in Special Tail, and they live till each of them is 100 years old, and have no issue, yet does the law make no impossibility of having children, and they continue Tenants in Tail: But if the wife die without issue, there the Law saith an apparent impossibility. 1 Inst. 28. See this Dict. title Tenure III. 7.

This estate is considered, by Blackstone, as an estate for life of the legal kind, contradicting with such as are conventional. See this Dict. title Life-Estates. Blackstone also shows the propriety of the long periphrasis which the law makes use of, as absolutely necessary to give an adequate idea of the nature of this estate. 2 Comm. c. 4, p. 114.

This estate is, by the learned Commentator, said to be of an amphibious nature, partaking partly of an Estate-tail, and partly of an Estate for Life. The Tenant in Tail is in truth only Tenant for Life, but with many of the privileges
TAIL, &c.

of a Tenant in Tail; or he is Tenant in Tail, with many of the restrictions of a Tenant for Life; as to forfeit his estate if he alienate it in fee simple; whereas such alienation by Tenant in Tail, though voidable by the issue, is no forfeiture of the estate to the reversioner, who is not concerned in interest till all possibility of issue be extirpated. But, in general, the Law looks upon this estate as equivalent to an estate for life only; and, as such, will permit this tenant to exchange his estate with a tenant for life; which exchange can only be made of estates that are equal in their nature. See title Exchange of Lands. And although, like Tenant in Tail, he is not punishable for waste if he cut down trees, yet they are not his property, but will belong to the first person living at the time when they are cut, who has an estate of inheritance. See title Waifs. 2 Comm. c. 8. & n. See also 1 Inst. 27, 28, and the notes there; and 2 P. Wm. 340.

TAINT; See Attaint.

TAKING, felonious or unlawful; See titles Felony; Fraud; Larceny.

TALE; See Count; Declaration; Pleading.

TALENT, A weight of 62 pounds; also a sum of money among the Greeks, of about 100 l. value. [Arch. Dict.]

TALES, Lat.] A supply in case of a jury not appearing, or challenged as not indifferent, &c. of one or more such persons present in Court; as are equal in reputation to those that were impanelled, in order to make up a full jury. See title Jury.

TALES, The name of the book's King's Bench Office, of such persons as are admitted in the Tales. 4 Inst. 93.

TALLAGE, Tallygion, from the Fr. Taille.] Is metaphorically used for a part or a share of a man's substance, carved out of the whole, paid by way of tribute, toll, or tax. Stat. de Tallage non concedente temp. Edw. 1: Strange's Ann. 445. And, according to Sir Edw. Coke, Tallage is a general word for all taxes. See title Taxes. 2 Inst. 532.

TALLAGERS, Tax or toll gatherers mentioned by Chaucer.

TALLIUM FACERE, To give up accounts in the Exchequer, where the method of accounting was by Tallys. Med. in Socce. Mich. 6 Edw. 1.

TALLY, Taille; Fr. Taille; Ital. Taglia, i.e. Scindere.] A flick cut in two parts, whereon is marked, with notches or otherwise, what is due between debtor and creditor; as now used by brewers, &c. And this was the ancient way of keeping all accounts, one part being kept by the creditor, the other by the debtor. Hence the Taller of the Exchequer, whom we now call the Teller. There were two kinds of Tallies formerly used in the Exchequer; the one termed Tallies of Debt, which were in the nature of an acquittance for debts paid to the King, on the payment whereof these Tallies were delivered to the debtors, who, carrying them to the Clerk of the Pipe-office, had there an acquittance in parchment for their full discharge. Stat. 1 K. 2. c. 5. The other, Tallies of Reward or Allowance, being made to Sheriffs of counties, as a recompence for such matters as they had performed to their charge, or such money as was cast upon them in their accounts of course, but not leviable, &c. Stat. 27 H. 8.

TASSUM, TASS.UM, for Tassum, a priest's garment covering him over.

TASSUM.
TASSUM, A mow of corn or hay, from the Fr. Taffir, to pile up. Taffir, to mow, or heap up; nod tassum for caro, to pitch to the mow. Rot. Hill. 35 Edw. 3.

TATH. In the counties of Norfol and Suffolk, the Lords of Manors claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground; which liberty was called by the name of Tath. Spem.

TAVERN; See titles Inn; Drunkenness.

TAU, By Selden in his notes upon Exodus, signifies a crofs. Mon. Angl. iii. 121.

TAURI LIBERI LIBERTAS, In ancient charters, is used for a common bull; so called, because he is free and common to all the tenants within such a manor or liberty, &c.

TAWERS; See Tawers.

TAXES.

The expence of Government to the individuals of a great nation, is like the expence of management to the joint-tenants of a great estate, who are all obliged to contribute in proportion to their respective interests. For it is certain, that there can be no State whatsoever, subject to the government of many, or of one, without Taxes: For, though we should suppose it content with the power it possesses, and without endeavouring to acquire more, it is impossible but that, from time to time, it must have outrages to revenge; discontents to reprefs; and the innumerable necessities, arising within itself, must indispensably incur regular expences, sometimes greater, sometimes left. See Highmore on Excise, Introd. § 1.

The nature of the King's ordinary Revenue, as also something respecting the origin and application of that which Blackstone terms his extraordinary Revenue, particularly as relates to the Civil Lift, has been laid before the Reader under title King, V. 4. Some further particulars, as to the latter, apply to the subject now under consideration.

The Taxes which are raised upon the Subject, are either annual or perpetual. The usual annual Taxes are those on Land and Malt: The perpetual Taxes consist of the Customs, paid immediately by the merchant. The Excise duties, paid sometimes upon the consumption, and frequently upon the retail sale, which is the last stage before the consumption; the duties on Salt, on the Postage of Letters; on Stamps, Horses and Windows; Licences to Hackney Coaches and Carriages, in London, and the parts adjacent; to Horses and Pedlars; duties on Office and Personal on Servants; Horses, Carriages, Dogs, and a great variety of other articles; Many of these Taxes seem to be termed perpetual, as being granted for no limited time: But they are, from time to time, altered and enlarged; and some, formerly imposed, have been repealed. Many of the late imposed Taxes are under the control of the Commissioners of Excise and Stamps; the Law relating to which branches of the Revenue, as well as that concerning the Customs, might well form separate Volumes: not very easy to be compiled, or well understood.

Some of these Taxes are termed Affessed Taxes: under which denomination the Land-Tax is generally included; that being raised by an assessment: But in strictness, Assessed Taxes are those which are under the management of the Commissioners for the affairs of Taxes; and these at present are the duties on Horses and Windows; Wagons, Carriages, Coaches and other carriages; Servants, Horses, and Dogs.

The several amounts of all these Taxes, and the Acts of Parliament by which they are imposed, it would be next to useless to state in a work of this nature; since they are continually varying with almost every Session of Parliament. A fact exemplified very fully in the course of printing this Work, and by which the particulars stated, as to some of these Taxes, under former titles, are now become erroneous. The general principle of these Taxes may be seen, however, by the references to the several titles Customs, Excise, &c. And some few further particulars, of a national or historical nature, shall also be stated under the present Head.

The Revenue, arising from these Taxes, and which has been rapidly increasing for a series of years, may be
TAXES.

The Consolidated Fund, above mentioned, funded: mortgaged by Parliament, to raise an annual sum for the maintenance of the King's Household and Civil Litt. For this purpose, in the last Reign, the produce of certain branches of the Excise and Customs, the Post Office, the duties on Wine Licences, the Revenues of the remaining Crown Lands, the Profits arising from Courts of Justice, (which articles include all the hereditary Revenues of the Crown,) and also a clear Annuity of 120,000l. were settled on the King for life, for the support of his Household and the honour and dignity of his Crown.

And as the amount of these several branches was uncertain, (though in the last Reign they sometimes raised almost one million,) if they did not arise annually to 800,000l., the Parliament engaged to make up the deficiency. But King George II., having, soon after his accession, spontaneously signified his consent, that his own hereditary Revenue might be disposed of as might best conduct to the utility and satisfaction of the Public, and gratefully accepted of the limited sum of 120,000l. per anna, for the support of his Civil Litt, the said hereditary and other Revenues were carried into, and made a part of the Aggregate Fund, and afterwards of the Consolidated Fund, which is charged with the payment of the whole Annuity to the Crown.

This sum being found insufficient, application was, from time to time, made to Parliament to discharge debts contracted on the Civil Litt: And, at length, the annual amount was increased to 600,000l. by Stat. 17 Geo. 3. c. 21. See further, this Dict., title King V. 4.

To state something further, in addition to what has been said under title Land-tax, and other titles in this Week, on the subject of some of the Taxes, considered individually:

The Land-tax, in its modern shape, has superseded all the former methods of rating either property, or persons in respect of their property; whether by tenths, or fifteenths, fabulides on land, hydages, feuages, or tailleges. A short explanation of which, however, (extracted from 1 Comm. c. 8,) will greatly assist the Student in understanding our ancient Laws and History.

Tents, and Fifteenths were temporary aids infilling out of personal property, and granted to the King by Parliament, 2 Inf. 77: 4 Inf. 34. They were formerly the real tenth or fifteenth part of all the moveables belonging to the Subject; when such moveables, or personal estates, were a very different and a much less considerable thing than what they usually are at this day. Tents are laid to have been first granted under Henry II., who took advantage of the fashionable zeal for Croisades to introduce this new taxation, in order to defray the expense of an expedition to Palestine; which he really, or seemingly, had projected against Saladin, Emperor of the Saracens; whence it was originally denominated the Saladin Tenth. Hood. A.D. 1189: Cartis, l. 719: Home, l. 359.

But afterwards Fifteenths were more usually granted than Tents. Originally the amount of these Taxes was uncertain, being levied by affinements newly made at every fresh grant of the Commons; a commutation for which is preferred by Matthew Paris, (A.D. 1272.) But it was at length reduced to a certainty, in the eighth year.
year of Edward III.; when, by virtue of the King's commission, new taxes were made of every town, parish, and city in the kingdom, and recorded in the Exchequer; which rate was, at the time, the fifteenth part of the value of every township; the whole amounting to about 29,000l; and therefore it still kept up the name of a Fifteenth, when, by the alteration of the value of money, and the increase of personal property, things came to be in a very different situation. So that, when, of later years, the Commons granted the King a Fifteenth, every parish in England immediately knew their proportion of it; that is, the same identical sum that was assized by the same aid in the eighth of Edward III.; and then raised it by a rate among themselves, and returned it into the royal Exchequer.

The other ancient levies were in the nature of a modern Land-tax; for we may trace up the original of that charge as high as to the introduction of our military tenures; when every Tenant of a Knight's fee was bound, if called upon, to attend the King in his army for forty days in every year. But this personal attendance growing troublesome in many respects, the tenants found means of compounding for it, by first finding others in their stead, and, in process of time, by making a pecuniary satisfaction to the Crown in lieu of it. This pecuniary satisfaction at last came to be levied by all offices, as for so much for every Knight's fee, under the name of Scutages, which appear to have been levied for the first time in the fifth year of Henry ii., on account of his expedition to Flanders, and were then, it seems, mere arbitrary compositions, as the King and the Subject could agree. But this precedent being afterwards abused into a means of oppression, in levying feuages upon the landholders by the royal authority only, whenever our Kings went to war, in order to hire mercenary troops and pay their contingent expenses, it became the subject of a matter of national complaint; and King John was obliged to promise in his Magna Carta, that no feuage should be imposed, without the consent of the Common Council of the Realm. This clause was indeed omitted in the Charters of Henry III., where we only find it stipulated, that feuages should be taken as they were used to be in the time of King Henry ii. (c. 37.) Yet afterwards, by a variety of statutes under Edward I., and his grandson, it was provided, that the King shall not take any aids or taxes, any tallage or Tax, but by the common assent of the great men and Commons in Parliament. See title Liberty.

Of the same nature with feuages upon Knights' fees were the assessments of Hydage upon all other lands, and of Tallage upon cities and boroughs.现代版.—but they all gradually fell into disuse upon the introduction of Subsidies, about the time of King Richard II. and King Henry IV. These were a Tax, not immediately imposed upon property, but upon persons in respect of their reputed estates, after the nominal rate of 4s. in the pound for lands, and 5s. 6d. for goods; and for those of aliens in a double proportion. But this assessment was also made according to an ancient valuation; wherein the computation was so very moderate, and the rental of the kingdom was supposed to be so exceedingly low, that one Subsidy of this sort did not, according to Coke, amount to more than 70,000l. 4 Inf. 33: Whereas a modern Land-tax, at the same rate, produces two millions. It was anciently the rule never to grant more than one Subsidy and two Fifteenths to a time; but this rule was broken through for the first time on a very pressing occasion, the Spanish Invasion in 1588; when the Parliament gave Queen Elizabeth two Subsidies and four Fifteenths. Afterwards, as money sunk in value, more Subsidies were given; and we have an instance in the first Parliament of 1650, of the King's desiring twelve Subsidies of the Commons, to be levied in three years.

The grant of Scutages, Tallages, or Subsidies by the Commons did not extend to spiritual preferments; those being usually taxed at the same time by the Clergy themselves in Convocation; which grants of the Clergy were confirmed in Parliament, otherwise they were illegal, and not binding. A Subsidy granted by the Clergy was after the rate of 4s. in the pound according to the valuation of their livings in the King's books; and amounted, as Coke states, to about 20,000l. 4 Inf. 33. While this custom continued, Convocations were wont to sit as frequently as Parliament; but the last Subsidies, raised by the Clergy, were those confirmed by 31st. Car. 2. c. 10; since which another method of taxation has generally prevailed, which takes in the Clergy as well as the Laity. In recompense for which the beneficed Clergy have from that period been allowed to vote at the election of Knights of the Shire; and therefore forward, the practice of giving ecclesiastical subsidies hath fallen into total disuse. Dall. of Sheriff. 418: Gilt. Hift. Exc. c. 4.

The Lay Subsidy was usually raised by Commissioners appointed by the Crown, or the great officers of State; and therefore, in the beginning of the civil wars between Charles I. and his Parliament, the latter having no other sufficient revenue to support themselves and their measures, introduced the practice of laying weekly and monthly assessments of a specific sum upon the several counties of the kingdom; to be levied by a pound rate on lands and personal estates; which were occasionally continued during the whole duration of the war, sometimes at the rate of 150,000l. a month, sometimes at inferior rates.

After the Restoration, the ancient method of granting Subsidies, instead of such monthly assessments, was, as it seems once, and once only, renewed; e. g. in 1665, when four Subsidies were granted by the Temporal, and four by the Clergy; which was, in fact, the last time of raising supplies in that manner. For the monthly assessments being now established by custom, being raised by Commissioners named by Parliament, and producing a more certain revenue; from that time forward we hear no more of Subsidies, but occasional assessments were granted as the national emergencies required. These periodical assessments, the Subsidies which preceded them, and the more ancient Scutage, Hydage, and Tallage, were to all intents and purposes a Land-tax; and the assessments were sometimes expressly called so. Though a popular opinion has prevailed, that the Land-tax was first introduced in the reign of King William III. See title Land-tax.

The learned Commentator is of opinion, that the last time of raising Supplies by way of Subsidy was in 1579; and he seems to have been misled by the title of Stat. 22 & 23, c. 21, § 3, vizz. “An act to grant a Subsidy to his Majesty for supply of his extraordinary occasions.”
But although among a great variety of other Taxes, 11. in the pound is to be railed upon land, yet the mode of collecting it is totally different from the former subsidy assessment; it is to be levied by exactly the same plan and arrangement as were afterwards adopted in stat. 4 W. & M. c. 1. All the material clauses in stat. 22 & 23 C. 2. c. 3, are copied verbatim into stat. 4 W. & M. c. 1. The act of Charles II. is not printed in the common edition of the Statutes at large; but is given at length in Kebbel's Edition. See 1 Comm. c. 8, n. 5.

The MALT-TAX is a sum of 750,000L. railed every year by Parliament ever since 1657, by a duty on every bushel of malt, and a proportional sum on certain liquors, such as Cyder and Perry, which might otherwise prevent the consumption of malt. This is under the management of Commissioners of Excise; and is indeed itself no other than an annual excise.

As to the Customs and Excise, see those titles in this Dictionary.

The duty on SALT consists in an excise, imposed, per bushel, by several statutes. This is not generally called an Excise, because under the management of different Commissioners. But the Commissioners of the Salt duties have, by stat. 1 Ann. 8. c. 21, the same powers, and must observe the same regulations, as those of other excises. See further, title Salt.

As to the duty on the carriage of Letters, see this Dictionary, title Post-Office.

As to the Stamp duties, see this Dict. title Stamps.
As to the duty on Houses and Windows.

As early as the Conquest, mention is made in Domini-

day-Book of fumage or fuggs, vulgarly called smoke

carriages; which were paid by colouer to the King for

every chimney in the house. And we read that Edward

the Black Prince, (soon after his succession in France,) in

imitation of the English custom, imposed a tax of a florin

upon every hearth in his French dominions. But the

first parliamentary establishment of it in England was by

stat. 15 & 16 Car. 2. c. 10; whereby an hereditary re-

venue of 2s. for every hearth, in all houses paying to

Church and Poor, was granted to the King for ever.

And, by subsequent statutes for the more regular assess-

ment of this Tax, the contable and two other substi-

tutional inhabitants of the parish, to be appointed yearly, (or the

surveyor, appointed by the Crown, together with such

contable or other public officer,) were, once in every

year. empowered to view the inside of every house in

the parish. But, upon the Revolution, by stat. 1 W.

& M. 8. c. 1. c. 10, hearth-money was declared to be

"not only a great opprobrium to the poorer sort, but a

badge of slavery upon the whole people exposing every

man’s house to be entered into, and searched at pleasure,

by persons unknown to him; and therefore, to erect a

dying monument of their Majesties’ goodness in every

house in the kingdom, the duty of hearth-money was

taken away and abolished." This monument of good-

ness remains among us to this day; but the prospect of

it was somewhat darkened, (says Blackstone,) when, in

six years afterwards, by stat. 7 W. 3. c. 18, a Tax was

laid upon all houses (except cottages) of 2s. now ad-

vanced to 3s. per annum and a Tax also upon all win-

dows, if they exceeded nine, in such house. Which rates

have been, from time to time, varied, being now exten-

sively taken on all Windows exceeding 6; and power is

given to surveyors, appointed by the Crown, to inspect

the outside of houses, and also to pass through any house

two days in the year, into any court or yard, to inspect

the windows there. A duty from 6d. to 1s. in the

pound, is also imposed on every dwelling house inhab-

ted, together with the offices and gardens therewith

occupied (farm houses and cottages excepted): which
duty, as well as the former, is under the direction of the

Commissioners of the Land-tax. See 1 Comm. c. 8.

The Duty imposed on MALT SERVANTS, retained or

employed in the several capacities specifically mentioned

in the statute for that purpose, extends to almost every

fort of male domestic, except such as are actually em-

ployed only in hulbndry or manufacture. This is under

the management of the Commissioners of Land-tax and

Window-tax.

The Revenue arising from the duty imposed on li-

censes to HACKNEY COACHES and CHAIRS in London

and parts adjacent, is governed by Commissioners of its

own, and is, in truth, a benefit to the Subject: For the

particulars, see this Dictionary, title Coaches.

The Duty on OFFICES and PENSIONS consists of an

annual payment of 1s. in the pound, (over and above all

other duties,) out of all salaries, fees, and perquisites of

Offices, and out of all pensions and gratuities payable by

the Crown, exceeding 100L. per annum. This highly per-

cular Taxation was imposed by stat. 31 Geo. 2. c. 22, and

is under the direction of the Commissioners of Land-

tax.

For the further particulars relative to the above Taxes,
as also to the many others from time to time imposed, it

will be necessary, for every person interested, to refer to

the statutes, by which they are regulated: And it may be a

good caution not to treat too implicitly to Abridg-

ments or tables; though frequently highly useful, it are yet inevitably liable to mistakes.

It is considered as a rule of construction of Revenue-

acts, in ambiguous cases, to lean in favour of revenue. This rule will be found to be agreeable to good policy and the public interests; particularly when it is con-

fidered that disputes as to the meaning and effect of Revenue

laws most generally arise in consequence of attempts,
ofen wholly unjustifiable, to evade them. Beyond this,

which may be regarded as established Law, no one can

ever be laid to have an undue advantage in the Courts of

Justice. See 1 Comm. c. 8, n.

TAXATIO BLADORUM, A Tax or imposition

laid upon corn. Cowell.

TAXATIO NORWICENSIS. The valuation of eccle-

sialical benefices made through every diocese in England,

can occasion of the Pope's granting to the King the tenth

of all spirituals for three years. Which Taxation was

made by Walter Bishop of Norwich, delegated by the

Pope to this office in 38 Hen. Ill., and obtained till the

19 of Edw. 1. when a new Taxation, advancing the

value, was made by the Bishops of Winchester and

Lincoln. Cowell.

TAXERS. Two officers yearly chosen in Cambridge
to see the true gauge of all weights and measures; though

the name took rise from taxing or rating the rents of

houses, which was anecdotally the duty of their offices.

TAYLORS, Contracts entered into with journeymen

Taylores, for advancing their wages, are declared void;

and Taylores, in London, giving greater wages than al-

lowed, shall forfeit 5L. and journeymen accepting the

fame,
fame, or refusing to work for the settled stated wages, the hours appointed, may be sent to the House of Correction for two months, &c. Stat. 7 Geo. 1. c. 13.

By Stat. 8 Geo. 3. c. 17, Certain new regulations are established as to Master-Taylors and their journeymen. Their hours and price for working are limited within London and five miles thereof. The Justices are empowered to call witnesses before them on suspicion that the regulation is broken through, and, on conviction, to commit the offenders. Also the Quarter Sessions, in London, are enabled to make new regulations, if requisite, as to wages and hours of work. Masters, within the limits, employing men out of the limits, to evade the act, are to forfeit 50s. a moiety to the King, the other to the informer. See also title Button.

TEA, A pleasant sort of liquor, now much used in England, and introduced from China and the East Indies, being made of the product of a shrub growing in those parts: it seems to have been first noticed in the Stat. 12 Car. 2. c. 15. It now forms a considerable article of commerce under the direction of the East India Company. By the Consolidation Act, Stat. 27 Geo. 3. c. 13, it is liable to a duty of 5 per cent. on importation.—Dealers in Tea must take out an annual licence. And the Company give the King 10s. a year for every hundred chests they deliver to London. (B的思想, lib. 1. cap. 10, calls M. Anstett of London, a man of considerable article in Tea, given by the company to the King for 500 chests.)

 theological, or MEDICAL, to prose or bring forth.] A royalty or privilege granted by the King's charter to the Lord of a Manor, for the having, refining and judging of bondmen and villeins, with their children, goods, and chattels, &c. Gleant. lib. 5. c. 2.

TECHNICAL WORDS, in Ind stricts; See title Indictments. Indictments. See also titles Debt; Conveyance, &c.

TEDING-PENNY; Teding-penny, Tedding-penny; A small duty or payment to the Sheriff from each Tithing, towards the charge of keeping courts, &c. from which some of the Religious were exempted by charter from the King. Court. Hen. 1.

TEINLAND, Teinland, or Thelaind; See Theland.

TELLER, A considerable officer in the Exchequer, of which officers there are four; whose office is to receive all money due to the King, and to give the Clerk of the Pells a bill to charge him therewith: They also pay all persons any money payable by the King, and make weekly and yearly books of their receipts and payments, which they deliver to the Lord Treasurer. See titles Exchequer; Accounts, Public.

TELLIGRAPHY, From Sax. Tellian, dico, Gr. ὑμνός, ὑμνέω; quæse a telling any thing by writing.] Written evidences of things past. Bloom. Tellitore.

TELLWORM, That which or labour which the tenant was bound to do for his Lord, for a certain number of days; from the Saxen word Tellan, numerate, &c. were, opos. Thorn. Ann. 1254. TEMENTALE, or TENEMENTAL, A tax of two shillings upon every plough-land. Haw. Hist. f. 419. A Decennary. Leg. Ed. Conf.
TEMPORALITIES.

The custody of these Temporalties is vested, by
Blackstone, as part of the King's ordinary revenue: (See title King, V. 4.) This, upon the vacancy of the Bishopric, is immediately the right of the King, as a consequence of his prerogative in church matters; whereby he is considered as the founder of all Archbishops and Bishops, to whom during the vacancy they revert. And for the same reason, before the dissolution of Abbeys, the King had the custody of the Temporalties of all such Abbeys and Priorities as were of Royal foundation, (but not of those founded by Subjects,) on the death of the Abbot or Prior. 2 Inst. 15. Another reason may also be given, why the policy of the Law hath vested this custody in the King; because as the successor is not known, the lands and possession of the See would be liable to spoil and devastation, if no one had a property therein. Therefore the Law has given the King, not the Temporalties themselves, but the custody of the Temporalties, till such time as a successor is appointed; with power of taking to himself all the intermediate profits, without any account of the successor; and with the right of presenting, (which the Crown very frequently exercises,) to such benefices and other preferments as fall within the time of vacancy. Stat. 17 Eliz. 2. 5. 1. c. 14: F. N. B. 32.

This revenue is of so high a nature, that it could not be granted out to a Subject, before, or even after, it accrued; but by Stat. 14 Edw. 3. 5. 4. c. 4, 5, the King may, after the vacancy, lease the Temporalties to the Dean and Chapter, saving to himself all advowsons, echeano, and the like. Our ancient Kings, and particularly William Rufus, were not only remarkable for keeping the Bishoprics a long time vacant, for the sake of enjoying the Temporalties, but also committed horrible waste on the woods and other parts of the estate; and to crown all, would never, when the See was filled up, restore to the Bishop his Temporalties again, unless he purchased them at an exorbitant price. To remedy which, King Henry I. granted a charter at the beginning of his reign, promising neither to sell, nor let to farm, nor take any thing from, the domains of the Church, till the successor was installed. And it was made one of the articles of the Great Charter, that no waste should be committed in the Temporalties of Bishoprics, neither should the custody of them be sold. Stat. 9 H. 3. 5. c. 5. The same is ordained by the Stat. Wm. 113 Eliz. 1 st. 21; and the Stat. 14 Edw. 3. 5. 4. c. 49 (which permits, as we have seen, a lease to the Dean and Chapter,) is still more explicit in prohibiting the other exactions. It was also a frequent abuse, that the King would, for trifling or no causes, feize the Temporalties of Bishops, even during their lives, into his own hands: But this is guarded against by Stat. 1 Edw. 3. 5. 2. c. 2.

This revenue of the King, which was formerly very considerable, is now by a customary indulgence almost reduced to nothing: For, at present, as soon as the new Bishop is consecrated and confirmed, he usually receives the restitution of his Temporalties quite entire, and untouched, from the King; and at the same time does homage to his Sovereign; and then, and not sooner, he has a fee simple in his Bishopric, and may maintain an action for the prebenda, 1 Inst. 67, 341. See 1 Com. cap. 8.

TEMPTATIO or TENTATIO, A trial or proof.
Tenants in Common.

Tenants in Common may be created, either by the destruction of two estates, in joint-tenancy and co-parcenary, or by special limitation in a deed. By the destruction of the two estates, mentioned, is intended such destruction as does not sever the unity of possession, but only the unity of title or interest: As, if one of two joint-tenants in fee alienates his estate for the life of the alienee, the alienation and the other joint-tenant are Tenants in Common; for they now have several lives, the other joint-tenant by the original grant, the alienee by the new alienation; and they also have several interests, the former joint-tenant in fee simple, the alienee for his own life only. Litt. § 293. So, if one joint-tenant gives his part to A. in tail, and the other gives his to B. in tail, the doweries are Tenants in Common, as holding by different titles and conveyances. Litt. § 292.—If one of two par- ceners alienates, the alienee and the remaining parcener are Tenants in Common; because they hold by different titles, the parcener by defeant, the alienee by purchase. Litt. § 309. So likewise, if there be a grant to two men, or two women, and the heirs of their bodies, here the grantees shall be joint-tenants of the life-estate, but they shall have several inheritances; because they cannot possibly have one heir of their two bodies, as might have been the case had the limitation been to a man and a woman, and the heirs of their bodies begotten; And in this and the like cases, their issues shall be Tenants in Common; because they must claim by different titles, one as heir of A., and the other as heir of B.; and those too not titles by purchase, but defeant. See Litt. § 285. In short, whenever an estate in joint tenancy or coparcenary is dislodged, so that there be no partition made, but the unity of possession continues, it is turned into a Tenancy in Common. 2 Comm. c. 12.

A Tenancy in Common may also be created by express limitation in a deed: But here care must be taken not to insert words which imply a joint estate; and then if lands be given to two or more, and it be not joint-tenancy, it must be a Tenancy in Common. Land given to two, to hold the one moiety to one, and the other moiety to the other, is an Estate in Common; and, if one grants to another half his land, the grantor and grantee are also Tenants in Common: Because, joint-tenants do not take by distinct halves or moiety; and by such grants the division and severality of the estate is so plainly expressed, that it is impossible they should take a joint interest in the whole of the tenements. But a devise to two persons to hold jointly and severally, has been held to be a joint-tenancy; because that is necessarily implied in the word "severally;" the word "jointly" perhaps only implying the power of partition: And an estate given to A. and B., equally to be divided between them, though in deeds it hath been said to be a joint-tenancy, (for it implies no more than the Law has annexed to that estate, viz. divisibility,) yet in wills it is certainly a Tenancy in Common; because the devisee may be presumed to have meant what is most beneficial to both the devisees, though his meaning is imperfectly expressed. See 1 Eq. Ab. 291; 1 P. Wms. 17; 3 Rep. 39; 1 Vent. 32. And this nicety in the wording of grants makes it the most usual as well as the safest way, (in them as well as in Wills,) when a Tenancy in Common is meant to be created, to add express words of exclusion as well as description, and limit the estate to A. and B., to hold as Tenants in Common, and not as Joint-tenants.

It is noticed under title Joint-tenants, that their tenure, though formerly favoured in Law, is now considered as odious. In consequence of this, in Wills, the expressions, equally to be divided, shares and shares alike, respectively between and among, have been held to create a Tenancy in Common. 2 Acts. 121; 2 Br. C. R. 15; 1 P. Wms. 14. And there seems but little doubt that the same construction would now be put even upon the word jointly: But these words certainly are only evidence of intention, and will not create a Tenancy in Common, where the contrary, from the other parts of the will, appears to be the manifest intention of the testator. 3 Br. C. R. 215.

The words, equally to be divided, make a Tenancy in Common in surrenders of copyhold, and also in deeds which derive their operation from the statute of Uses. 1 P. Wms. 14; 1 Wils. 342; 2 Vifl. 287. And though it has formerly been suggested (see 1 Vifl. 185; 2 Vifl. 257,) that these words are not sufficient to create a Tenancy in Common, in Common Law conveyances, yet there seems but little doubt that, in such a case, nothing but invincible authority would now induce the Courts to adopt that opinion, and to decide in favour of a joint-tenancy. 2 Comm. c. 12. p. 194. n. See title Joint-tenants.

As to the incidents attending a Tenancy in Common: Tenants in Common (like Joint-tenants) are compellable by statute to make partition of their lands; which they were not at Common Law. See title Joint-tenants. 131. They properly take by distinct moieties, and have no entirety of interest; and therefore there is no servior-ship between Tenants in Common. Their other incidents are such as merely arise from the unity of possession; and are therefore the same as appertain to Joint-tenants merely upon that account: Such as being liable to reciprocal actions of waste, and of account, by the statute Wills, 2 c. 22; 4 Ann. c. 16.—For by the Common Law, so Tenant in Common was liable to account with his companion for embiggging the profits of the estate; though, if one actually turns the other out of possession, an action of ejectment will lie against him. 1 Eq. 195; 296. See 2 Comm. c. 1 b.

Adverse possession, or the uninterrupted receipt of the rents and profits, is now held to be evidence of an actual outlier. And where one Tenant in Common has been in undisturbed possession for 20 years, in an ejectment brought against him by the Cotenant, the Jury will be directed to presume an actual outlier, and consequently to find a verdict for the defendant. 1 Com. 277.

As for other incidents of Joint-tenants, which are derived from the priorit of title, or the union and entirety of interest.
interfet, (such as joining or being joined in actions, unless in the case where some entire or indivisible thing is to be recovered,) there are not applicable to Tenants in Common, whose interests are divided, and whose titles are not joint but several. Litt. § 311: 1 Inf. 167; 2 Comm. c. 12.

Estates in Common can only be divided two ways: 1. By uniting all the titles and interests in one Tenant, by purchase or otherwise; which brings the whole to one severalty: 2. By making partition between the several Tenants in Common, which gives them all respective severalties. For indeed Tenancies in Common differ in nothing from sole estates, but merely in the blending and unity of possession. As to Tenancy in Common of things personal, see title Joint-tenancy in Things personal.

TENDE, To tender, or offer: it is mentioned in our old books; as, to tend a traverise, an averment, &c. Britun, c. 76: Staunsf. Praecog. 16.

TENDER, Fr. Tendre.] The offering of money or any other thing in satisfaction; or circumspectly to endeavour the performance of a thing: as a Tender of rent is, to offer it at the time and place when and where it ought to be paid: Also it is an act done to save the penalty of a bond before action brought, &c. Terms de Ley 537. See titles Pleading, particularly 1. 4; Money into Court. As to Tender of rent, see title Rents.

There are several statutes which authorize a Tender of amends, where otherwise it would not have been allowable. As stat. 11 Geo. 2. c. 19. § 20, in cases of distress for rent.—Stat. 17 Geo. 2. c. 38. § 10, in cases of distress for poor's rates.—Stat. 24 Geo. 2. c. 44, in actions against Officers of the Peace.—Stat. 23 Geo. 3. c. 70. § 30, in actions against Excise Officers: And stat. 24 Geo. 3. c. 47. § 35, in actions against Custom-House Officers.

Tender of money on a bond is to be made to the person of the obligee at the day appointed, to save the penalty and forfeiture of the bond, and it ought to be done before witnesses; though, if the obligee be sued afterward, he must still pay it: But if the obligee be to do any collateral thing, which is not part of the obligation, as to deliver a horse, &c., and the obligee offer to do his part, and the obligee refuse it, the condition is performed, and the obligation discharged for ever. 1 Inf. 207, 208.

By stat. 4 & 5 Ann. c. 16. § 12, the plea of Jacob post dies is granted to an action on bond; but a Tender and refusal of principal and interest at a subsequent day cannot be pleaded, as not being within the equity of the statute. For such construction would be prejudicial; as it would empower the obligee, at any time, to compel the obligor to take his money without notice. Bull. Ni Cr. 171: Selion's Pract. Tender.

If A., B., and C., have a joint demand, and C. has a separate demand, on D., and D. offers A. to pay him both the debts, which A. retakes, without objecting to the form of the Tender, on account of his being only entitled to the joint demand, D. may plead this Tender in bar of an action for the joint demand; and should have it as a Tender to A., B., and C. 3 Term Rep. 684.

On award, that the defendant should pay money on such a day, and at such a place; the defendant pleaded that he tendered the money at the day and place; and because he did not set forth that he continued there ready to pay it at the last instant of the day till after sunsetting, &c., it was held ill. 2 Gro. 243.

Every Tender at the Common Law, or which is given by statute, must be made before the writ issued.

If a Tender be in fact made before the bringing of the action, though, by the form of the writ, it may appear to have been afterwards, (as if Tender in vacation and right of preceding term,) the whole of the writ was in fact made when the writ was in fact issued or not been in pleading, or sometimes given in evidence contrary to the form: But if a bill be filed on the same day the Tender is made, though subsequent thereto, it seems that the defendant can no way avail himself by pleading the prior Tender; as there is no fraction of a day in Law. See Selion's Prac. Tender, and this Dictionary, titles Pleading; Latiat; Process.

A right to damages, on account of the non-payment of a debt, or non-performance of a duty, may, after being taken away by a Tender and refusal, be revived again by a demand subsequent to the Tender and refusal; a new cause of action arises from the non-payment or non-performance thereof upon such demand: And therefore the plaintiff may reply such subsequent demand and refusal by the defendant, which, if proved, the plaintiff must have a verdict. Brook. 7: Impar. K. B.

In cases of a plea of Tender as to part, and non-assumpsit as to the residue, and the issue on the Tender being found in favor of the defendant, the balance proved is under 420. yet the defendant, though within the jurisdiction of the County Court of Middlesex, is not entitled to eject, under stat. 23 Geo. 2. c. 33. § 19. Not in case of a set-off having the same effect. Doug. 448: See Impar. K. B.

Wherever the debt or duty arises at the time of the contract, and is not discharged by a Tender and refusal, it is not enough for the party who pleads the Tender, to plead a Tender and refusal, and more prit, (that he is still ready,) but he must also plead non assumpsit prit, (that he was always ready.) Salt. 622: 12 Mug. 152. Garsb. 413. In what cases Tender and refusal shall discharge the debt, see 1 Wil. 117.

Every requisite which is in a particular case necessary to the validity of a Tender, must, in pleading such Tender, be flewed to have been complied with; else the plea is not good. Salt. 614. A defendant cannot be permitted to plead non assumpsit as to the whole, and a Tender as to part; because, if the general issue be found for the defendant, it will appear on record that no debt is due, though something is admitted by the defendant. 4 Term Rep. 154. But a Tender to the whole declaration is good; and it is usual to plead, as to all except the sum tendered, non assumpsit; and as to that sum, a Tender. And a defendant may plead, not guilty, and a Tender of amends, in trespass. A Black Rep. 1809: Selion's Pract. A Tender is pleadable on a quantum minime. 1 Str. 576: Salt. 622. And a Tender may be pleaded after a judge's order to plead judiciably. 1 Bunn. 59.

To an avery for rent, the plaintiff in repulsion may plead a Tender and refusal, without bringing money into Court; because, if the distresses were not rightfully taken, the defendant must answer the plaintiff his damages. Salt. 584. But if the distresses were rightfully taken, the plaintiff cannot plead Tender of rent and coals in bar of an avery for rent in any case, unless the distresses were made of corn, grist, &c., growing on the premises, and then such plea is given by stat. 11 Geo. 2. c. 19. § 9. The money cannot be taken out by the defendant, though he has a verdict. Str. 1027.
TENDER.

On a Tender being pleaded, and the money paid into Court, the plaintifl replies a subsequent demand and refusall, whereupon issue being joined and tried, a verdiict was found for the defendant. Whereupon he moved to have the mone,y paid into Court returned, in part of his costs; but the Court was of opinion it could not be done. 206.

Though a Tender is made, and the plaintifl refuses the money, yet the Tender cannot be pleaded in bar of the action; either in debt or assamptio, but in bar of the damages only; for the debtor shall nevertheless pay his debt. 254.

There is a difference in pleading a Tender in action of debt, and in action on the case: In an action of debt, the defendant ought to close his plea by praying judgment, if the plaintifl ought to have or maintain his action to recover any damages against him; for, in this action, the debt is the principal, and the damages are only accessory. But, in assamptio, the damages are the principal; and therefore, in pleading a Tender, the defendant ought to conclude his plea with a prayer of judgment; if the plaintifl ought to have or maintain his action, to recover any more or greater damages than the sum tendered, or any damages by reason of the non payment thereof. 254.

The plaintifl may either admit the Tender or not: if the latter, he should not take the money out of Court; for, by taking it, he admits the same to be right, and judgment is given for the defendant to go quit as to that plea: But if he admits it, and goes for further damages, on the ground that the Tender was not sufficient to cover his demand, he may take the money out of Court, enter an acquittal as to the Tender, or confess the same in his replication, and proceed on the general issue for the residue. 254.

TENEMENT. That clause in a deed wherein the tenant of the land is created and limited. The office of a Tenement in a deed is to limit and appoint the tenure of the land which is held, and how, and of whom it is to be held. Before the statute called Quia emptores terrarum, 13 Ed. 1. ft. 1, the Tenement was usually of the fee and his heirs, and of the chief Lord of the fee, whereby Lords lost their echeats, forfeitures, &c. But since that statute, the Tenement, where the fee is simple palis, must be of the chief Lord of the fee, by the customs and services whereby the feoffor held; yet this statute does not extend to a gift in tail, for the donee shall hold of the donor. 214.

TENEMENTARY LAND, Was the outland of manors granted out to tenants by the Seven Thanes, under arbitrary rents and services. 214.

TENEMENTIS LEGATIS, An ancient writ lying to the city of London or any other Corporation, (where the old custom was, that men might devise by will lands and Tenements as well as goods and chattels,) for the hearing and determining any controversy touching the same. 214.

TENENDUM, That clause in a deed wherein the tenant of the land is created and limited. The office of a Tenement in a deed is to limit and appoint the tenure of the land which is held, and how, and of whom it is to be held. Before the statute called Quia emptores terrarum, 13 Ed. 1. ft. 1, the Tenendum was usually of the fee and his heirs, and of the chief Lord of the fee, whereby Lords lost their echeats, forfeitures, &c. But since that statute, the Tenendum, where the fee is simple palis, must be of the chief Lord of the fee, by the customs and services whereby the feoffor held; yet this statute does not extend to a gift in tail, for the donee shall hold of the donor. 214.

The Tenendum seems now to be incorporated with the Habendum, for we say, To have and to hold, in which clause the estate is limited, 254. See title Deth. 4.

TENENTIBUS IN AFFECTIO QUERANDI. A writ for him to whom a defeifor hath alienated the land whereof he diffilied another, that he be not mollified in aile for the damages, if the defeifor had herewhich to satisfy them. Reg. Orig. 214.

TENEDERED, or TIEHEOFED. Sec. 44a. Dict. Gage and Principles of Deative Law. 29.

TENEMENTALE. See title Deth.

TENOR. Lat. Of writ, records, &c. is the substance or purport of them; or a transcript or copy. Tenor of a deed hath been held to be a transcript, which it cannot be if it differs from the deed; and justifac tenorum imports it, but not ad effec tum, &c. for that may import an identity in sense, but not in words. 354.

In action of debt brought upon a judgment in an Inferior Court, if the defendant pleads not the record, the Tenor of the record only shall be certified; and by Hulse, Chief Justice, it may be the fame on certiorari. 256.
A return of the Tenor of an indictment from London, on a certiorari, to remove the indictment, is good by the city charter; but in other cases it is usual to certify the record itself. 2 Hen. P. C. c. 27. § § 26, 76.

TENOR. Indictment in writ, is a writ whereby the record of an Indictment, and the process thereupon, is called out of another Court into the King's Bench. Reg. Orig. 69. See Certiorari.

TENOR. Presentment. The Tenor of these Presentments, is the matter contained therein, or rather the intent and meaning thereof; as, to do the same according to the true intent of the deed or writing.

TENTATES PANIS. The essay or assay of bread, Blount.

TENTER. A stretch or titer of cloth, used by dyers and clothiers, &c. mentioned in the statutes S. 3. c. 53; 39 Eliz. c. 60.

TENTHS. Dictator. The tenth part of the annual value of every Spiritual Benefice, according to the valuation in the King's books; being that yearly portion or tribute which all ecclesiastical livings formerly paid to the King. They were anciently claimed by the Pope, to be due to him jure divino, as High Priests, by the example of the High Priest among the Jews, who had Tenths from the Levites. But they had been often granted to the King by the Pope upon divers occasions, sometimes for one year, and sometimes for more; and were annexed perpetually to the Crown by the Statute 26 H. 8. c. 4. 39 Eliz. c. 10. See title Tenths.

TENTS. Robbing of, in fairs and markets, is felony without benefit of Clergy, stat. 5 & 6 Ed. 6. c. 9. See title Larceny II. 1.

TENURE.

TENURA, from the Latin Tentere.] The manner whereby lands or tenements are held; or the Service that the Tenant owes to his Lord. There can be no Tenure without some Service, because the Service makes the Tenure. 1 Inst. 1. 91. A Tenure may be of houses, and land or tenements; but not of a rent, common, &c.

Under the word Tenure is included every Holding of an inheritance, but the signification of this word, which is a very extensive one, is usually restrained by coupling other words with it; and is sometimes done by words which denote the duration of the tenant's estate; as, if a man holds to himself and his heirs, it is called Tenure in fee-simple. At other times, the Tenure is coupled with words pointing out the instrument by which an inheritance is held; thus, if the holding is by copy of court-rol, it is called Tenure by copy of court-rol. At other times, this word is coupled with words that show the principal service by which an inheritance is held; as, where a man held by Knight-Service, it was called Tenure by Knight-Service. 5 Nett. Abrid.

 Almost all the real property of the kingdom is, by the policy of our Laws, supposed to be granted by, dependent upon, and holden of, some superior Lord; by and in consideration of certain Services to be rendered to the Lord by the Tenant or possessor of this property. The thing holden is therefore called a Tenement; the possessor thereof, a Tenant; and the manner of their possession, a Tenure. Thus, all the land in the kingdom is supposed to be held, mediately or immediately, of the King, who is styled the Lord paramount, or above all;—Thou that held immediately under him in right of his crown and dignity, were called his Tenants in capite, or in chief; which was the most honourable species of Tenure, but at the same time subjected the tenants to greater and more burdensome services than inferior Tenures did; a distinction which runs through all the different sorts of Tenure. 2 Comm. c. 5.

The above maxim, and the whole of the doctrine of Tenures, being founded on the Feudal System, some knowledge of that is absolutely necessary, in order to comprehend the nature of Tenures, as they relate either to the ancient or present state of the English Law. These subjects are admirably and clearly treated in Chapters IV, V, and VI of the 2d book of the Commentaries. The following abridgment from Sir Martin Wright's Introduction to the Laws of Tenures, (frequently referred to by the learned Commentator,) with some extracts from the Commentaries, are submitted to the Reader: Having been arranged in the following order, by the Editor of this Work, very early in the progress of his labours, it is now inserted, (not without some hesitation,) principally because references are made to and from this Title in very many Titles throughout the Dictionary. An acquaintance with this part of our Law is so intimately connected with all that concerns real property, that even an imperfect attempt at this presenting it, in one arranged and connected view, must be attended with advantage to the Student; and will, in a small degree at least, obviate the inconvenience arising from the disjointed nature of the information conveyed, under the several Heads, scattered through the Dictionary in alphabetical order.

I. The Law or Doctrine of FEUDS, as relates to the present purpose.

1. Definition.
2. Origin and Progress.
3. Doctrine of Dificnts.
4. Feuds Proper.
5. Feuds Improper.
7. —Warranty.
8. —Aid, (and fee II. 6.)

II. The Establishment of Feuds, or Fees, in England, and their Incidents.

1. First Introduction.
2. Effect thereof.
3. Consequences of Tenure—Wardship.
4. —Marriage.
5. —Relief.
6. —Aid.
7. —Ejciage.
8. —Escheate.

III. The
III. The Principles, Qualities, and Rules of Tenures.

7. For Life: 14.皓

I. FEUDS, according to Somner, is a German compound, consisting of feb, fee, or fees, (a salary, stipend, or wages,) and bade, head, or bote (quality, kind, or nature).—Feudum, [fief, or] Fee, or land held in fee, is, therefore, (considered in its primary acceptance,) what was held in fee bade, by contrac¬tion, feu or feu; i.e. in a stipendiary, conditional, mercenary way and nature; with the acknowledgment of a superior, and a condition of returning him some service for it; upon the withdrawing whereof, the land was revertible unto the Lord. Somn. en Gav. 166, 111.—Alodial lands were such as the Proprietor had the absolute property in; the term being derived from the Northern, aided, right; so called from suet, proprietor, and all, revert; the syllables being transposed. See Z Comm. 44, 37 n. Others derive this word from an and lot, allotment: the mode of dividing what was not granted as stipendiary property, Robert C. V.

Feuds, or Feuda, says Selden, are the same which, in our Laws, we call Tenancies, or Lands held; Feuda, also, are possessions so given and held, that the possessor is bound to do service to him from whom they were given. Seld. Tit. Hon. 273.

This service was originally purely military; and the possessor or Feudatory's homage or fealty was, (as it seems,) in the infancy of feuds, a kind of military engagement, rather implied than expressed; to be faithful to his beneficiary, and also affiant unto him. Spelman therefore calls a feud, feudum militare; and Somner says that every possession is improperly and corruptly called a feu or fee, that is not held in service, the grand, of all fees. Spelm. Feuds 6: Id. Gloss. in 1: Somn. Gav. 49.

2. Feuds were originally a military policy of the Northern conquering nations, devised as the most likely means to secure their new acquisitions; and were large districts, or parcels of land, given or allotted by the conquering General to the superior Officers of his army; and by them dealt out, in less parcels, to the inferior Officers and most deserving Soldiers. Thus a proper military subordination was naturally and rationally enough, inferred and established; and an army of Feudatories were as many stipendiaries, always on foot, ready to mutter and engage in the defence of their country. So that the feudal returns of fealty, or mutual fealty and aid, seem originally to have been political, or rather natural, consequences, drawn from the apparent necessity these warlike people were under of maintaining their ground, with the same spirit, and by the same means, they had got it. Wright's Laws of Tenures 7—10.

As the Princes of Europe were every day more and more alarmed by the progress of the Northern Standard, many of them (and by degrees all) went into this or a like policy, as the strongest intrenchment; and, in imitation of it, they, reserving the dominium or property of the lands they gave, parcelled out some of their own possessions or territories under an express fealty; engaging their Beneficiaries or Feudatories to make them the like returns of fidelity and aid, as followed from the nature and design of an original feud. From hence, probably, the feudal obligations began to be considered as renders, or services of render, calculated for the benefit of the Proprietary; who was, in respect of the dominium remaining in him, thenceforth called Dominus; and military aid or service (as now called) was understood to be the real or fictitious terms or conditions of all property or possession in Europe. Wright 10—15.

3. Feuds were originally precarious, and held at the will of the Lord; they next became certain for one year; and were, some time after, given for life. But though feuds were not at first hereditary, yet the vassal or feudal tenants were called naturi, as if born such; and it was usual, and even thought hard, to reject the heir of the former Feudatory, provided he was able to do the services of the feud, and the Lord had no just objection against him. But though the Lord did not remove the heir of the feud, yet it is not likely that he succeeded absolutely as of course, but that he paid a fine, or made some acknowledgment; in the nature of relief for the renewal of the feud; and though that real estate, yet the fire was continued afterwards, became hereditary, and is well known at this day (though by several names) in most countries. Wright 13—15. See p. 115.

Feuds were afterwards extended, beyond the life of the first vassal or feudal tenant, to his sons, or some one of them whom the Lord should name. In process of time, grandchildren succeeded to sons, and brothers also succeeded to brothers, if the feud was antequam patrem; but not if it was novum, i.e. newly purchased or acquired; not having descended from the father to the brother first dying. At length, not only descendants in the direct line succeeded in dominium, but collaterals also, without regard to their degree, provided they were descended from, and were of the blood of, the first Feudatory. Wright 15—18, and the authorities there cited.—See the next division.

Spelman says, that these several conditions of feuds had their several denominations; while precarious, they were called manera: when for life, beneficia: and were first called feudus, when they began to be granted in perpetuity, and not before. Spelman Feuds 4, 9, 6. Con¬ ner says, Feudum was a word not known until about A. D. 1000. Somner en Gav. 102.

4. Feuds being thus originally in the hands of military persons, who were under frequent incapacity to cultivate their own lands, they found it necessary to commis¬ sion part of them to persons who, having no feudal pos¬ sessions of their own, were glad to possess them on any terms. To such persons small portions were let, reserving such returns of service, corn, cattle, or money, as might enable the proprietors to attend to the feudal duties uninterruptedly. By this means the feudal policy was considerably extended; as all persons accepting a feud were, under an express or implied fealty, obliged to answer the stipulated renders, and to promote the peace and welfare of the feudal society. From hence therefore
therefore arose the distinctions made by the feudists, of Feuds proper and improper, and the many subdivisions of these terms. *Wright 19*–*26.*

Proper Feuds are such, and such only, as are purely military; and, at this time, hereditary; and such as in all respects preserve the nature of an original feud, as before explained. It was the military nature of these feuds that first rendered women and monks incapable of receiving or succeeding to feuds of this sort; and that restrained the alienation, devolving, or incumbering of the feud by the Feudatory, without the consent of the Lord; and of the feignory by the Lord, without the consent of the Tenant; the obligations of the superior and inferior being mutual and reciprocal. The feudal course of succession, in all proper feuds, belonged to the sons only, (exclusive of daughters,) and to them equally; until, by a constitution of the Emperor Frederick, honorary feuds became indivisible; and, as such, they (and, in imitation of them, military feuds in most countries) began to descend to the eldest son only. *Wright 27*–*32.*

5. All feuds, fold or bartered for any immediate or contracted equivalent; or that are granted free of all service; or in consideration of one or more certain services, whether military or not; or upon a rent, or rent, in lieu of service; and all such feuds are, by express words in their creation or confirmation, alienable, or allowed to descend indiscriminately to males or females; are improper feuds. *Wright 32.* Of which sort most feuds are at this day.

They are distinguished from proper feuds, by such qualities only as are varied from or superadded to the feud by express provision of the parties. They must appear to be so from the words of the instrument; which solemnity is as necessary to this as to a proper feud: and the custom of the country where the feud lies must be accurately observed.

6. Few of the feudal obligations are, as such, of force with us. First mentioning Fealty, these of Eviction and Aid may deserve some notice; as our Laws of Warranty and Aid may be supposed to depend on them. Fealty, the essential feudal bond, is so necessary to the very notion of a feud, that it is a downright contradiction to suppose the most improper feud to subsist without it. *Craig de Just Feud. 45*–*7, 223:* 1 Lib. 129, a: *Sedl. Tit. Hen. 273.* See title Fealty.

7. The feudal obligation upon Eviction, in *wel feudum alium, ejusdem continebat, resuinit Dominus vel affiliationem profect* if considered as a penalty upon the Lord for refusing or neglecting, when required, to protect or defend the Feudatory's title to the fee, might be always reasonable; otherwise, it rather seems to have prevailed upon the refrain of contracted and improper feuds, than by the nature of a pure original feud. And though none of the ancient feudists make any strict distinction, yet they must be understood to speak of the times in which they wrote; in which such improper feuds chiefly prevailed; nay, when almost all feuds were alienable and saleable as matters of merchandise. *Wright 39*–*40.*

8. As underfoold to import an obligation upon the feudal Tenant to contribute to the private necessities or occasions of the Lord, was not of direct feudal obligation; the original feudal aid seeming to have been purely military, binding the Feudatory merely to concur with, and to assist his Superior or Lord, in defence of the feud, or feudal society. On this ground it can hardly be made out, that the several different aids which have been escaped, are to be inferred from the reason of feuds; but they rather seem to depend upon the usage or custom of the several countries where they are established. *Wright 40*–*42.* See *p. 40.*

### Tenures 1. 4–II. 2.

**II. 1. It is difficult to determine precisely the time when Feuds or Tenures were first brought into England:** Some have thought that they were planted here long before the Conquest; and yet it seems to have been introduced by William I. soon after. The authorities on both sides this question are numerous. See 1. *Lef. 75,* 6: *Prof. by By. Gibbon to Spelman on Feuds:* *Sedl. Tit. Hen. 150:* Bacon Hist. Eng. Gov. 161: *Templ. Inst. 171:* Hale Hist. Com. Laws 107, 213: *Craig de Jure Feud. 39:* Summ. of Gov. 100: Camden Brit. *I. 16.* p. 46: S. *5:* *Wright's Tenures,* p. 46, 57, 64.

One observation may be of service in deciding this question; that William I. about the 20th year of his reign, just when the general Survey of England, called *Domesday Book,* is supposed to have been finished, and not till then, summoned all the great men and landholders in the kingdom to London and Salisbury, to do their hommage and to swear their fealty to him. Hence we may reasonably suppose, if it, that this general homage and fealty was done at this time in consequence of something new; or else, that engagements so important to the maintenance and security of a man, that they were introduced by William I. soon after. That as this general homage and fealty was done about the time that *Domesday Book* was finished, and not before, it may be supposed that such survey was taken upon or soon after our ancestors' content to Tenures, in order to discover the quantity of every man's fee, and to fix his hommage. *Wright 52*–*56.*

On the whole, therefore, it seems, that it may safely be assumed, that Tenures first became a principal branch of the national policy in the time of William I.; for, even in the Saxon times, particular proprietors of large tracts of land, which they could not cultivate and manage themselves, might let some part of them to their neighbours, under various acknowledgments or return of service, not altogether unlike some of the feudal returns. Especially as our Saxon ancestors may be supposed to have had some notion of such returns, they being a colony or branch of the ancient Greeks, who first brought the feudal policy into Europe. *Wright 57,* 58.

The establishment of Tenures in England may be called an extraordinary alteration of the national policy; not only because it was such in many of its consequences, but likewise because it originally and immediately defeated all supposition or possibility of propriety in any other person than the King; inasmuch that it became a fundamental necessary maxim, principle, or fiction of our English Law of Tenures, (alluded to in the introduction to this Title,) that the King is universal Lord of his whole territories; and that no man doth or can possess
TENURES II. 2—6.

possess any part thereof, or lands therein, but as either mediatory or immediately derived from him. Wright 58. See also 1 Ingl. 65, a.

According to this position, of which the truth is undeniable, lands in England, except those in the King's hands, are feudal. This universal system of Tenures, if not quite peculiar to England, certainly does not prevail in several countries on the Continent of Europe, where the feudal system has been established; and it seems there are some few portions of allodial land in the Northern part of our own island. As to Scotland, Lord Stair expresses himself rather ambiguously on the subject; for he says, that there remains little of allodial land in Scotland; but in a few lines after, observes, that the glebes of the Clergy, which seem to come nearest to allodials, are more properly mortified, or, as we should call them, Mortmain Fees. Stair, Ingl. See 1 Ingl. 65, a. in n.

As William I. however, notwithstanding the monkish relations, and the misapprehensions of some modern writers, did not claim or possess himself of the lands of England, as the spoils of conquest; nor did the tyrannical and arbitrary subjection of the King to feudal dependence; but as the feudal law was at that time the prevailing law in Europe, William, who had always considered by this policy, might probably recommend it to our ancestors, as the most obvious and ready way to put them upon a foot with their neighbours; and to secure the nation against any future attempts from them. We find accordingly, among the laws of William I. a law enacting the feudal law itself; not indeed so remote, but in effect; as it requires from all persons the same engagement to, and introduces the same dependence upon, the King, as Supreme Lord of all the lands in England, as were supposed to be due to a Supreme Lord by the feudal law. The Law, is the 32d law of William I. (See Wright 65.) the terms of which are absolutely feudal, and are apt and proper to establish that policy with all its consequences: for it requires, "that all owners of land should expressly engage and swear that they would become Vassals or Tenants, and as such be faithful to William as their Lord; and that they would, in consequence thereof, every where faithfully maintain and defend his, their Lord's, territories and title, as well as person, and give him all possible aid and assistance against his enemies foreign and domestic." See also the 55th, 58th, 68th, and 69th laws of this King; and Sir M. Wright's ingenious observations upon the whole, in his book, p. 69. & seq.

3. Although it is certain that WARDSHIP could be no part of the law of feuds before they became hereditary, yet then, as they were often defended on infants who were incapable of performing or engaging in the services of the feud, Wardship of the Land, i.e. the custody of the feud itself, was retained by the Lord; that out of the profits he might provide a fit person to supply the infant heir's defect of services until he came of age to perform them. Wright 89.

With respect to the custody or Wardship of the Baby, there is no clear feudal reason to be given for it; and therefore we may suppose that our Norman ancestors might think it reasonable, rather in regard to the infant heir, than to the Lord himself, that the Lord who had the custody of the feud, should likewise have the care and maintenance of the infant Feudatory; who would thus be most likely to be qualified for the services of the feud. Farel, de I. Ang. c. 44; Smith de Rep. Ang. 264; Cowel, Ingl. lib. 1. tit. 17. § 2; 1 Ingl. 75, b; Bacon, Hist. Eng. Gov. 158. See 2 Comm. c. 5. p. 67; c. 6. p. 87; and this Dictionary, title Guardian.

4. As for MANORS, the Lords of our English fiefs might possibly take the hint from Normandy; though, in the feme of our law, in which it meant the interest of the Guardian in bequeathing a Ward in marriage, and was understood to be a beneficial perquisite of Tenure, no express notices of it can be found earlier than the statute of Mortons, c. 6, 7. (20 H. 3.) By the charter of Henry I., a daughter of any of the King's tenants was not, even in the lifetime of her father, to be married without the King's privy ; because otherwise she might marry a public enemy. But the King was to take nothing for his consent; nor could he restrain the father from marrying her to any that was not such enemy; but this charter says nothing of the marriage of males, nor does it give the legal colour or countenance to any private profit from the marriage of females. Our English Lords, however, by an extraordinary construction of Magna Charta, took upon them not only the absolute marriage of female wards, but of males too, which at length became one of the great feudal grievances. See Ll. H. c. 1. 264; Wright's Cases, 79. ; Glanv. rep. 75. ; 2 All. lib. 2. c. 37. p. 183; a; 2 Comm. c. 5. p. 72; c. 6. p. 88.

5. RELIEF; [Relevans, relevatio, relevium; intimating, that the inheritance, which, by the death of the former tenant, became jacent, or caducum, was thus relieved, lifted or raised up again. See Bracton, lib. 2. c. 36; Briston, 165; Spelman, Relevans] was not a service, but a fruit of feudal tenure. 2 Roll, Abr. 514; D. 3; 3 Rep. 66; 1 Ingl. 85. a. These were not arbitrarily introduced by William I., but brought into England with leads according to the custom of the feudal law, and other nations. And although Lord Coke (2 Lev. 7, 8; but see 1 Ingl. 175, 85) supposes Reliefs to have been certain at the Common Law, yet they were probably with us originally uncertain as by the feudal law; and were, no doubt, on this account, another of the great grievances of Tenure; to remedy which, several laws were made, fixing them at certain sums for all lands held by Knight-service, till the expiration of the Tenure, under the 12 Car. 2. c. 24. See Ll. W. c. 22; Ed. H. c. 1. c. 14; Magna Charta, c. 2; aut. l. 13; and Wright's Tenures.

The Relief of Seigneuriage, was fixed by the 40th law of William I. at one year's rent, and remains the same to this day; although it is not taken notice of in any of the charters of H. 1. John, or Hen. III. Glanv. lib. 9. c. 4; Flata, lib. 3. c. 17, § 12; 2 Id. 65, 76, 7; 2 Ingl. 352; and see 1 Ingl. 93. a. in n.; and title Relief in this Dictionary, and 2 Comm. c. 5. p. 65; c. 6. p. 87.

6. Arbs, (see aut. l. 83) called by Spelman, (Treatise on Feuds 57.) Tributes, and by our old authors Auxilia, were mere concessions, rendered by a tenant to his Superior or Lord, in times of difficulty and distress. Briston, lib. 2. c. 16. § 8; Flata, lib. 3. c. 14. § 9. These were not of direct feudal obligation; but first obtained out of a regard to the person and occasions of the Lord. The kind and quantum therefore of every aid was originally as various and uncertain as the occasion of the Lord and the
the abilities of the Tenant. But as Aids grew frequent, they became, in many countries, established rendevos of duty. Thus, in Normandy, the three moli usual and frequent Aids; 1st. To make the Lord's eldest son a Knight; 2dly, To marry his eldest daughter; and, 3dly, To ransom his person; became fixed and established. Besides these, there was one of an inferior nature, respecting only inferior Lords, viz. An Aid to enable the Lord to pay his relief; therefore called aid de relief. To all these our ancestors were liable, and thus far went into the Norman notion on this subject, nay they even went farther; for in the time of King John, inferior Lords took Aids to pay their debts, and in the time of King Hen. I, it was doubted whether Lords might not require Aids towards their military expeditions; but at length these inferior Aids, together with the aid de relief, and other illegal Aids imposed by the King himself, were effectually abolished by a charter of King John, which was afterwards reënforced by Stat. 24 Ed. I. c. 5, 6; and the two first of the usual aids before-mentioned were fixed, (by Stat. 25 Hen. I. c. 56, extended by Stat. 25 Ed. 3. c. 11, to aids required by the King,) as follows, viz. The Aid of a Knight's fee at 100., and of socage lands of 201. per annum, at 200., and so pro rata. These statutes do not regulate the 2d Aid for ransom of the Lord's person; this was less frequent, and by no means capable of certainty; it being the highest consequence, with regard especially to the Supreme Lord, that he should at any rate be ransomed as often as he was taken prisoner of war. *Wright 105—115. See 2 Comm. c. 5. 93, et seq. c. 6. p. 86.

7. When a fee determines for want of heirs or proper dexterum tenentes, the land falling back to the Lord is called an Escheat [Escaet]; and is such reckoned by our English Lawyers among the fruits or perquisites (though it might properly be considered as the absolute determination) of Tenure. *Spelman de Feudis. 57. *Speelman (ubi supra) divides Escheats into regal and feudal; (in which he is followed by Coke, 3 Inst. 111.) agreeable enough to the import of the word escheat (from the French escheater, to happen). But, strictly speaking, such lands are not held immediately of the King, and yet happen to him upon the commutation of any tenure, are not Escheats, but Forfeitures; which were given to the King by the Common Law, and do not depend upon the law of feods or Tenures, but upon Royal Laws, made long before their introduction, and which prevail even now. *Lambard, Li. aff. c. 4: Ll. Comiti. c. 54. See title Forfeiture.

Though this forfeiture to the King may seem severe on the one hand, in defeating his forignary, yet it seems a punishment inflicted on him, for his want of caution in the choice of his tenant. —The Law having inflicted a similar penalty on the Lord, where the tenant is guilty of felony only; the King, in this latter case, having the land a year and day, to the prejudice of the immediate Lord, to whom the estate in that case escheats. See Mag. Cela. 11, 11, 16, 17, 18, 19, 20, 21. 2 Inst. 25 Ed. 7; 3 Inst. 111; *St. de Proprig. Regal. 17 Ed. 2 c. 10: *Bawdenford, P. C. L. 1. c. 30: And for further matter, 2 Comm. c. 5. 5; and this Dictionary, title Escheat.

If lands be held of the King, as of an honour come to him by a common escheat, as the tenant's dying without heir, or committing felony, these lands are part of the honour; otherwise, if forfeited for treason, for then they come to the King by reason of his person and crown; and if he grants them over, &c., the patentee shall hold of the King in chief. *2 Inst. 64.

It was found by special verdict, That the Prior of Merton was teased of a house in Southwark, held of the Archbishop of Canterbury, as of his borough of Southwark; and (proviso of his reign) surrendered it to Hen. VIII., who granted it and other lands to 7. 3, and his heirs, to hold of him in liber burgis, by livery, for all services and demands, and not in capite, and afterwards Queen Mary granted the manor and borough of Southwark to the Mayor and Commonalty of London; and the tenant of the meafuage died without issue; and the question was, whether Queen Eliza., or the patentees of the borough should have the escheat? and adjudged for the Queen; for the first patentee of the meafuage held it of the Queen in socage in capite, as of a feudality in gross; and the words in liber burgis are merely void; for the land out of the borough cannot be held in liber burgis; and there shall not be several Tenures, for one Tenure was reserved by the King for all; therefore of necessity it shall be a Tenure in socage of the King. *Cr. Eliz. 110.

8. ESCHEAT is reckoned by Lord Hale, among the perquisites of Tenure; and, whether so or not, seems one of its most obscure and unintelligible branches. *Escheat, considered as a Service, or species of Tenure, was not so, as Littleton intimates, (§§ 95, 96,) a direct personal service of attendance upon the King in his wars; nor was it due upon all military occasions, as Knight Service was: But it was a pecuniary aid, or contribution, re"erved by particular Lords instead, or in lieu, of personal service; the better to enable them to bear the extraordinary expense of their own attendance and warfare, when the King made war on Scotland or Wales, or upon any foreign country, if the Tenant was so expressed. *Bract. l. c. 16: *Sta. 2 Ed. 1. § 85, 97, 103, 105, 118: *Mad. Hyl. Exc. 422: *Selb. Notes ad Henrym II. 113.

As the Lord's service abroad was thus uncertain, the quantum of this aid was seldom ascertained by reservation; but was usually proportioned to the fine received by the King from his tenants in capite, failing to attend in such expeditions. *Fleta, lib. 3. fol. 198.

This aid and fine were both of them called Easheate a seio quod adserit ad servitum militarem (Bract. ubi supra); in respect of the tenant which ought to be borne both by Lord and tenant in such wars. In this view Easheate was a specific service, of a different kind from Knight Service, in respect whereof only the tenant, on account of its subordination to the military policy of the nation, was esteemed as a Knight, or rather as a military tenant. *Wright 126, 7.

Easheate, however, it must be allowed, was anciently, as it is at this day, more generally understood to denote a mulct or fine for a military tenant's defect of service; as the feudal tevrities began to abate. *Mad. Hyl. Exc. 143, 145, 17, 18, 2 Ed. 189, 509, § 11: *Abr. ubi supra.

Our Kings, anciently taking advantage of, or perhaps complying with, this humour of their tenants, which made their actual services precarious, did sometimes, on occasion of war, without summons, affer a moderate sum upon each Knight's fee, as a Easheate or Easheate, by which the King might be enabled to provide Stipendaries. But as Easheate of this fort was a previous commutation for
TENURES II. 8.—III. 3.

for service really imposed at the King's will, and not incurred as a fine, it was not long submitted to: In the time of King John, it was not only inflicted upon as an undoubted right of the King's tenants, but the Barons urged, and the King, by his charter, declared, that no Ecusage should be imposed or inflicted nifi per commune concilium Regni. See Litt. § 97: 1 Inf. 72, a: Mag. Chir. cap. 37.

Ecusage thus becoming the only penalty for defect of service, many Lords, by agreement between them and their tenants, fixed it at a certain sum, to be paid as often as Ecusage should be granted, without regard to the rate inflicted by Parliament. Thus ascertained, it was called Ecusage certain; and because it did in effect discharge the tenant from all military service, the persons who held by such Ecusage were looked upon as free tenants, and no longer enrolled as tenants by Knight-service. Litt. §§ 96, 120: 1 Inf. 87, a.

As to Ecusage, see also the notes on 1 Inf. 72, 74. — And now Ecusage is expressly taken away by the Stat. 12 Car. 2. c. 3. See post. III. 3.; and had fallen into disuse long before; for there is an instance of Parliament affixing it since the reign of Edward II. See further 2 Comm. c. 5. p. 74, 85.

III. 1. IT IS SO ABSOLUTE A MAXIM, principle, or fiction of the Law of Tenures, that all lands are held either medially or immediately of the King, that even the King himself cannot give lands to absolute and unconditional a manner, as to let them free from Tenure. — And therefore, if the King should grant lands without reserving any particular service or Tenure, or if he should in express words declare, that his patentee should have lands aboue aliquo inde reddendo; yet the Law or established policy of the kingdom would create a Tenure; and the patentee should annually (before the Stat. 12 Car. 2. c. 24.) have held of him in capite by Knight-service. 1 Inf. 1, 65: 2 Inf. 501; Somn. on Gav. 126: 6 Rep. 6: 9 Rep. 123: Br. Tenures, 3, 52. And now, in such case, or if the King release the service to his tenant, it will not extinguish the Tenure; but the tenant shall, notwithstanding, hold by fealty, which, as before observed, (I. 6,) is an incident essential to every Tenure, and therefore cannot be released. 9 Rep. 123: Law of Tenures, 106: 2 Comm. c. 6. p. 85.

Lands, thus holden, are called TENURES; which were principally divided, according to their services, into Tenures by Knight-service and in Scutage.

According to Blackstone, these seem to have subsisted among our ancestors four principal species of lay Tenures, to which all others may be reduced: the grand criteria of which were the natures of the several services or renders, that were due to the Lords from their tenants. The Services, in respect of their quality, were either free or base services; in respect of their quantity and the time of exacting them, were either certain or uncertain. Free Services were such as were not becoming the character of a holden, or a tenant to perform; as to serve under his Lord in the wars, to pay a sum of money, and the like. Base Services were such as were fixedly for penances, or persons of a servile rank; as, to plough the Lord's land, to make his hedges, to carry out his dung, or other menial employments. The certain Services, whether free or base, were such as were fixed in quantity, and could not be exceeded on any pretense; as, to pay a fixed annual rent, or to plough such a field for three days. The uncertain depended upon unknown contingencies; as, to do military service in person, or pay an assessment in lieu of it, when called upon; or to wind a horn whenever the Scots invaded the realm; which are free services. Or to do service whenever the King should command; which is a base or villain service. 2 Comm. c. 5.

From the various combinations of these services have arisen the four kinds of Lay Tenure which subsisted in England till the middle of the last century; and three of which subsist to this day. Of these, Bradshaw (who wrote under Henry the Third) seems to give the clearest and most comprehensive account, of any author ancient or modern; of which the following is the outline or abstract: "Tenures are of two kinds, free tenement, and villeinage. And, of free-tenements, some are held freely in consideration of homage and Knight-service; others in free-fsocage, with the service of fealty only." And again, "Of villenages some are pure, and others are privileged. The former holds in pure villeinage, which, as by fealty only, it has vowed, and always be bound to an uncertain service. The other kind of villeinage is called villein socage; and these villein-fsocages do villein services, but such as are certain and determined." See Brad. I. 4. tr. I. c. 28.

Of the former seems to be as follows: First, where the service was free, but uncertain, as military service with homage, that Tenure was called the Tenure in Chivalry, per servitium militarem, or by Knight-service. Secondly, where the service was not only free, but also certain, as by fealty only, by rent and seisin, &c., that Tenure was called liberum socage, or free socage. These were the only free holdings or tenements; the others were villenous or servile: As, thirdly, where the service was base in its nature, and uncertain as to time and quantity, the Tenure was servitium villanum, absolute or pure villenage. Lastly, where the service was base in its nature, but reduced to a certainty, this was villenage, but distinguished from the other by the name of privileged villeinage, villanum privilegiatum; or it might be still called Scutage, (from the certainty of its services,) but degraded by its baseness into the inferior title of villicum socage, villein-socage.

2. TENURES BY KNIGHT-SERVICE differed very little from proper lands; but being now abolished by Stat. 12 Car. 2. c. 21, and turned into free and common socage, inquiry shall be made at some length into that existing Tenure. See ante I. 1. 11, 4; And 2 Comm. c. 5. 1.

3. TENURES IN SOCAE are holdings by any certain conventional services that are not military; the word Socage, according to Somn., being derived of the Saxon word Soc, (a liberty, privilege, or immunity,) and agere, a legal termination, signifying service or duty. Somn. Gav. 133, 143, 141: Litt. § 117: 1 Inf. 80, a: Brit. c. 65. 438: Plott. Hist. 1. c. 8.

It seems, however, more probable and consistent to derive Socage from jecca a plaga; the ancient service referred on this Tenure being to plough the Lord's land; but which is now changed into many other kinds of service. In this sense the Tenure is the servitium de tenue (or the Tenure by Knight-service) simply from the nature of the
nature of the service at first reserved. Weight 144, 4: 1 Inf. 96, (b) : Craig de jure Feud. 65: 2 Comm. c. 6, and the notes there.

By the degeneration of Knight-service, or personal military duty, into ecuage, or pecuniary affeiments, all the advantages (either promised or real) of the feudal constitution were destroyed, and nothing but the hardships remained: these may be collected from the foregoing detail, and are very justly and feelingly stated in 2 Comm. c. 5, p. 75, 76.

Palliative were from time to time applied by successive Acts of Parliament, which allred some temporary grievances. Till at length the humanity of King James I. contented, in consideration of a proper equivalent, to abolish them all, though the plan proceeded not to effect; in like manner as he had formed a scheme, and begun to put it in execution, for removing the feudal grievance of heritable jurisdictions in Scotland, which has since been pursued and effected by the statute 20 Geo. 2. c. 43, 50. King James's plan for exchanging our military Tenures seems to have been nearly the same as that which has been since pursued; only with this difference, that, by way of compensation for the loss which the Crown and other Lords would sustain, an annual fee-farm rent was to have been settled and irreparably annexed to the Crown, and affixed to the inferior Lords, payable out of every Knight's fee within their respective seigniories; - an expedient, seemingly much better than the hereditary excise, which was afterwards made the principal equivalent for these concessions. For at length the military Tenures, with all their heavy appendages (having, during the usurpation, been discontinued) were destroyed at one blow by the 1st. 12 Car. 2. c. 24. which enacts, "That the Court of Wards and Liveries, and all wardships, liveries, primer fealties, and service of livery, values and forfeitures of marriages, by reason of any Tenure of the King or others, be totally taken away. And that all fines for alienations, Tenures by service, Knight's service, and ecuage, and also aids for marrying the daughter or knighting the son, and all Tenures of the King in capite, be likewise taken away. And that all sorts of Tenures, held of the King or others, be turned into free and Common Sogage, save only Tenures in Frankalmoigne, Copyholds, and the honorary services of Grand Serjeantry." A statute, which was a greater acquisition to the civil property of this kingdom than even Magna Charta itself: Since that only pruned the luxuriances that had grown out of the military Tenures, and thereby preferred them in vigour; but the statute of KingCharles extirpated the whole, and demolished both root and branches. 2 Comm. c. 5, ad fin.

The above expression, in the title and body of the Act, as to Tenures in Capite, and which was also repeated by the Speaker of the House of Commons, in his address to the King on presenting the bill, is an inaccuracy of a very extraordinary nature. - For Tenure in Capite signifies nothing more than that the King is the immediate Lord of the land-owner; and the land might have been either of a Military or Sogage Tenure. See 2 Comm. c. 5, n. : Med. Bur. Ang. 238: 1 Inf. 108, n. 5: and this Ditt. title Serjeantry.

The several changes made in the Tenure of Sogage by this 1st. 12 Car. 2. c. 24, are the following: -

First, It takes away the Aids pur sine mariter and pur faire five chevaliers, which were incident to all Sogage Tenures.

2. It relieves Sogage in capite from the burden of the King's primogeniture, and of fees of alienation to the King, to both of which Sogage in capite was equally liable, with Tenure by Knight-service in capite, though not so to Wardship.

3. It extends the father's power of appointing guardians to children of both sexes; and thus supplied the means of still further preventing guardianship in Sogage. See this Dictionary, title Guardian. In all other respects, the Tenure in Sogage seems to be under the same circumstances, and attended with the same consequences, as it was before the Restoration.

Having thus reformed and improved this favourite Tenure, the statute, in the next place, provides for the extension of it throughout the kingdom. This it effectually secures, by converting into Sogage all Tenures by Knight-service, as mentioned above; and by taking from the Crown the power of creating any other Tenure than Sogage in future. 1 Inf. 95, (b) in n: And see 1a. 85. (a) in n.

It appears that there is nothing, however, in the above statute which in the least varies the Tenure in Frankalmoigne; it being expressly fixed in the statute, § 7. See this Ditt. titles Charitable Uses; Frankalmoigne; Mortmain. - Neither does it appear in any way to affect the Tenure by Burgage. See title Burgage-Tenure. - And it leaves the Tenure by villeinage as it was before; one of the provisos declaring, that it shall not be confirmed to alter or change any Tenure by Copy of Court-roll, or any services incident thereto. § 7.

4. Thus, therefore, All our English Fees, or Holdings, fall at present under the nature of Sogage-Tenures; which, though they vary in point of service, succession, &c. as improper fees, yet retain the nature of fees, as they are holden of a superior by fealty, and usually by some other certain service or acknowledgment; and as they are subject to relief and seisin. Weight 144, 5.

5. See further on the subject of Sogage, f. 57. Hist. 8. c. 20: Bratt. lib. 2. cc. 8, 35, 36: 2 Comm. c. 6.

Lawyers divide these Tenures, according to their duration, into Estates in fee, for life, or years, and for life only. In the present instance it may be sufficient to classify them under Estates in free, and for life only.

Estates in fee are either Fee-simple or Fee-tail.

5. A Fee-Simple, though it be according to Littleton (§ 1.) Hereditas para, is not so called, because it imports an estate purely alienable, or free from all tenure; but in opposition to free-conditional at Common Law, and fee-tail since the statute De donis. It imports a simple inheritance, clear of any condition, limitation, or restriction to any particular heirs; and defensible to the heirs general, whether male or female, lineal or collateral. In the express language of our Law, "Tenure in fee-simple is he who hath lands or tenements to hold to him and his heirs for ever." Littleton § 1: 1 Inf. 1: Pluta. lib. 3. c. 8.

In conveying, or conferring, these fees or estates in fee, though they are now, contrary to the original purity of proper fees, become vendible, the ancient form of donation is still preserved; and a fragment, whether constituting or transferring a hef, or fee, retains even at this day the form of a gift. It is perfected and noticed by the
TENURES III. 5—9.

the same solemnity of livery and seisin on investiture, as a pure feudal donation, and is still directed and governed by the same rules. 1 Inf. 9, a; 42, a; Fleta, lib. 3. c. 15. §§ 4, 5; Bradton, lib. 2. c. 17. § 1. See titles Conveyance; Bond, Feoffant; Grant, &c.

Tenures being thus derived from the feudal law, and partaking of their origin, Fees, or estates in fee, could not, at Common Law, be aliened without the licence of the Lord: (See note I. § 4.) This introduced sub-infeudation by the tenant to hold of himself; which were so far restrained by Magna Charta, c. 32, as to compel the tenant of an inferior Lord to keep in his own hands so much of the fee as would be sufficient to answer his services to the Lord. The first statute that materially varied from this law of feuds, was the statute of Quia emporiorum, 12 E. 1. c. 1, which enabled such tenants to fell all or part of their lands, to hold of their Lords, by the same services as the feoffor had held. The King's tenants were, however, under several disabilities of alienation, but which were all finally removed by stat. 3 Ed. 3. c. 15; and fines for alienation were paid to the King by his tenants. By the statute 6 H. 8. c. 5, these statutes were afterwards made, by which lands were subject, in a special manner, to the particular liens created by these statutes. Vide 2 Inf. 394; and this Dictionary, title Execution.

As tenants could not, so neither could he subject the tenancy or fee to his debts, until the statute. Welfin. 2. (13 E. 1. st. 1.) c. 18, subjected a moiety of lands to execution; leaving the other to enable the tenant to do the services of the Tenure. But several other statutes, as 13 E. 1. st. 3, de mortuorum; 27 E. 3. a 95; 23 H. 8. c. 5, were afterwards made, by which lands were subject, in a special manner, to the particular liens created by these statutes. Vide 2 Inf. 394; and this Dictionary, title Execution.

As tenants could not, by the feudal or Common Law, alien their tenancies without the licence or consent of the Lord; so neither could the Lord himself alien his seigniory without the consent of his tenant. Hence sprang the doctrine of Atenment, now quite abolished by stat. 4 Am. c. 16. § 9. See title Atenment.

For the feudal reservations on devise, see title Will. The rules which at present operate on the law of descents to the eldest son, and the general preference of males to females, as well as those which exclude the immediate. ascending line of relations, are all deducible from these feudal foundations of the Law, and are very ably explained by Sir Martin Wright in his Treatise, pp. 175—185. See this Dictionary, title Descents; and further, as to Estates in Fee-simple, this Dictionary, title Fee and Fee-simple.

6. A Fee-TAIL, (feodon tallatinum,) as distinguished from a fee-simple, is a fee limited and restrained to some particular heirs, exclusive of others. It is so denominated from the French, tailleur, to cut, or cut off, on account of the particular restriction by which the heir-general was often, and collateral or remote heirs were always, cut off. Fleta, lib. 3. c. 3; Bradton, lib. 2. c. 5, §§ 5, 6; Brit. c. 34; Litt. §§ 13, 18; 1 Inf. 19; 69; Spelm. Glyf. ad. o. Feto.

a. This Dictionary, title Tail.

A Fee thus limited was at Common Law known by the name of a Feo conditional, so called from the condition, expression or implied in the gift or constitution of the fee, that in case the donee died without such particular heirs, the land or fee should revert to the donor. But our an-

ners were, after heir or issue had, suffered at Common Law, to alien such fee, and to defeat the donor as well as the heir; on a supposition that the condition was, for this purpose, satisfied or performed by the donee's having issue. See 1 Inf. 19; a; Pleas. Comm. 242, 56; 247, a.

This practice being manifestly contrary to the intent of the gift, was restrained by stat. Welfin. 2. (13 E. 1. st. 1.) c. 11; commonly called the Statute De donis conditionibus; (or, shortly, the Statute De donibus,) which required that the will and intent of the donor should be observed, and the fee go given should go to the issue, and for want of issue revert to the donor. So that, though Littleton says (§ 13,) that a Fee-tail is by force of this statute, yet it is not to be understood as creating any new fee, but only obviating and distinguishing the limitation from the condition, and restoring the effect of each: i.e. the limitation to the issue, and the Reversion to the donor: yet as by means of this statute the limitation was raised above the condition, the fee might thenceforth be demised from the limitation, which became the substance, as it had before been the immediate end, of the gift. This was at length included by the legal fiction of Feo and Reversion. See this Dictionary under that title, and also title Feo-frey, and for further matter on Estates, and the policy of making them alienable, title Tail and Fee-tail. Wright 186. 9.

7. Estates for Life are either conventional or legal; of the former sort are such estates as are, in their creation, expressly given or conferred for life of the tenant only. These are of a feudal nature, held by fealty, and liable to conventional services. Of the other sort are, 1. Tenancies in tail after possibility of issue extinct; 2. Tenancies in dower; and by the Curtesy. See the several titles, and title Life-Estates, in this Dictionary.

The first of these is distinguished by the particular description merely to suggest the legal disadvantages cast on such estate-tail, when turned to a hopeless inheritance. It arises where lands and tenements are given to a man and his wife in especial tail, and either of them dies without issue had between them. The survivor is tenant in tail after possibility, &c. See Litt. § 32: 1 Inf. 28: 1 Rep. 80; and this Dictionary, title Tail after Possibility, &c.

8. Dowery, called by Craig, Trivum and Tercis, and known to the feudalists by several other names, was probably brought into England by the Normans, as a branch of their doctrine of fees or tenures; for we find no footsteps of dower in lands until the time of the Normans: But, on the contrary, provision is made by one of the laws of the Saxon King, Edward, for the support of the wife surviving her husband, out of his goods only, Wright 191. 2. See this Dictionary, title Dowery.

9. Tenancies by the Curtesy, or per legum especie, though so called as if they were peculiar to England, were known not only in Scotland, but in Ireland, and in Normandy also; and the like custom is to be found among the ancient Almes laws; and yet it does not seem to have been feudal, nor does its original any where satisfactorily appear. Some English writers (Mirror, Sidley, Cowell) ascribe it to Henry I.; but Nut. Bacon calls it a Law of Counter-tenture to that of Dower, and yet supposes it as ancient as from the time of the Saxons; and that it was therefore rather reloved than introduced.
by Henry I. Eng. Gov. 105, 147. But as there are no notices of this curtesy among the laws of the Saxons, or among those we have of the Anc. Law, we may, perhaps, with safety rely on Craige's conjecture, that it is derived from the

Civil Law. Craige de Juris Feud: 312; Wright 192, 5.

10. FORFEITURES of estates in fee, though they were very many by the feudal and Common Law, vide Stacts, in v. Feud., &c. L. H. c. 1, 43; Chart. 1. g. c. 4; Brutt. L. c. 33; §§1, 12,] are reduced, as the Law now stands, to forfeiture by Attainders of treason; and by

Covenant.

Of the former enough has been said at prent. Ante II. 7; and this Dictionary, titles Easement; Forfeiture; Tenant. The latter, which depended on true feudal principles, and introduced many feudal hardships, was at length regulated by the statute of Gloucester, 6 Ed. 1, c. 4; and Stat. W. & M., 5 Ed. 1, c. 21. These statutes provided, that in case a tenant should not pay his rent for two years, and there should not, during that time, be sufficient detares on the land, the Lord might have a Caijouer; and by means thereof, if the tenant did not tender his arrears before judgment, the Lord should upon such covenant recover the land or fee itself, and bar the tenant for ever. See 1 Inj. 255, 409, 460; Bested's Real. 133; 4 F. N. B. 208, 9; Wright 196, 302; and this Dictionary, titles Covenant; Rent.

Estates for life are also forfeited by waiite, and by all such acts as tend to defeat the reverision. 1 Inj. 251, 2. See title Life-Estates.

There are yet two kinds of Estates which, though they fall under the head of Socage, are denominated and usually treated as particular species of Tenure, viz. Burgage and Gavelkind.

11. Burgage-Tenure, so called to denote the particular service or Tenure of houses in ancient cities or boroughs, is certainly a species of Socage-tenure. The tenement being held by a certain annual rent in money, or by some service relating to trade; and not by military or other service that had no such relation.

The qualities of this Tenure vary according to the particular customs of every borough, and that without prejudice to the feudal nature of it. See Wright 204, 1; Mad. f. Burgi; Litt. §§ 152, 3, 4, 5, 6, 7; Co. Litt. 100; Somn. on Gen. 148, 8; Taylor on Gen. 171; 1 Inj. 169, 42; See Craige, de Juris Feud: Jenk. Cent. 137; 2 Comm. c. 6, p. 82; and this Dictionary, title Burgage.

12. The properties of GAVELKIND TENURE are so many, and the qualities of it so different from those of any other Tenure, that it seems to have been doubted whether it is a Tenure of feudal nature or not. The Gavelkind tenant retains strong marks of propriety; as power to alienate even at the age of 15; Somn. Gen. 8, 9; Freedom from forfeiture for felony; and many other privileges unknown to persons holding their lands by any other kind of Tenure.

It is however certain that the Tenure is strictly feudal, and, like the more usual Tenures by Knight's-service and Socage, is denominated from the kind or nature of the prevailing service, which, as the same imports, tributary or cessual; the word Gavelkind being (according to Somn or Gen. 12, 35, 37; and see Blount in a.) a compound of the Saxon words, Gavin, gavel, or gidle, a tribute, tax, or rent; and geond, band, fort, or quality; thus directly imparting that such lands are casual or rented: Although they are also subject to other kinds of service, this Tenure in fact being, like Burgage, a kind of Socage Tenure, and liable to the same feudal burdens and forfeitures. See Wright 206, 212.

As for the famous partible quality of most of the lands in Kent, [not all, see Hale Hist. C. L. 225; Stats. 31 H. 8, c. 1; but see 1 Mod. 249; 1 Sed. 153; Cro. Car. 465; Lutw. 256, 754; by which it appears that all lands in Kent shall be premised, without pleading, to be gavelkind; unless they can be proved to be disallowed;] it was not a particular or proper effect of Gavelkind Tenure. But it was rather the ancient course of distress retained and continued in that county. Somn. on Gen. 89, 90. And however particular this course of distress (whereby the lands of the father are equally divided among all the sons; and of a brother dying without issue, among all his brethren; Litt. 3: but see Car. 140: Co. Litt., 128;) may now appear to us, yet it is considered as a species of Socage Tenure, and that all Tenures by Socage, or of that nature, were anciently in point of succession divisible; and that they might, without prejudice to their feudal nature, descend equally or otherwise, as best suited the genius and usage of every county; it will appear much more extraordinary that all other counties should depart from this, the more ancient and natural course of distress, than that this particular county should retain it. Wright 213. See further, 2 Comm. c. 6; and this Dict. title Gavelkind.

13. Under this Head, Tenure, something ought to be said of Copyhold; though they are not reducible to any of the preceding divisions of the subject.

Copyholds are the remains of Villainage; which, considered as a Tenure, was not entirely Saxon, Norman, or Feudal, but a Tenure of a mixed nature, advanced by the Normans upon the Saxon bondage, and which gradually superseded it. See F. N. B. 12, C. 1 Inj. 58, 9; Bacon's Use of the Law 425, 3; Litt. tit. Villainage; Old Ten.; Somn. Gen. 65, 6.

The Normans, according to Sir William Temple, finding among us a sort of people who were in a condition of downright servitude, used and employed in the most servile works, and belonging (they, their children, and effects) to the Lord of the soil, like the rest of the stock or cattle upon it; they refranchised all such as fell to their share; by admitting them to fealty in respect of the little livings they had hitherto been allowed to possess, merely as the scanty supports of their base condition; and which they were still suffered to retain upon the like service as they had in their former servitude been used and employed in. But this poise, as now clothed with fealty, and by that means advanced into a kind of Tenure, differed very much from the ancient servile poise, and was from henceforth called Villainage. See Temp. Introd. 59; Mirror, b. 2, c. 28; Bruntlic. lib. 2. c. 8, § 1; Lit. §§ 266, 7; Leg. W. 1, c. 29, 33; in which last the word Villain seems first applied to such tenant. See also this Dictionary, title Villain; and Somn. Gen. 89, 90.

Our Saxon ancestors having submitted to the feudal law, which to them was a Law of Liberals, perhaps imitated the Normans in this particular: But neither did our Saxon or Norman ancestors mean to increase or strengthen the possession of their villaines; but to leave
TENURES.

that altogether as dependent and precarious as before; have only that, as by their admission to seidly, their pollition was put, in some measure, upon a feudal footing, the Lords could not deal with them so wantonly as before: (vidi ante l. 4.) And at length the uninterrupted benevolence and godly nature of the Succesive Lords of many manors, having, time out of mind, permitted them, or them and their children, to enjoy their pollitions in a course of succession, or for life only, became customary and binding on their successors, and advanced such pollition into the legal interest or estate we now call Copyhold, which yet remains subject to the same servile conditions and forfeitures as before, they being all of them so many branches of that continuance or custom which made it what it is. Senv. Gaz. 58: Spenl. Glos. 17. 1. 52; Glos. Br. Feud. 1. title Villainage.

From this view of the origin and nature of Copyholds we may possibly collect the ground of the great variety of customs that influence and govern those estates in different manors; it appearing that they are only customary estates, after the ancient will of the first Lords, as preferred by the law or Rolls, or kept up by the constant and uninterrupted usages of the several preserved and evidenced by the Rolls, or other. And upon the whole, they are now in the State of the statute of Charles II. which is of a faitual nature, and called the Tenure in Frankaldum. See this Dictionary under that title.

TERM, Terminis.~Signifies commonly the limitation of time or estate; as a lease for term of life, or years, &c. Bract. lib. 2. Term is also a space of time, wherein the Superior Courts at Westminster sit. See Term.

TERMINUM QUI PRETERIT. See Ad Terminum; Ejectment.

TEmmor, Tenus &c Terminus.] He that holds lands or tenements for term of years or life. Litt. 5. 100. A Tenor for years cannot plead in affin like tenant of the freehold; but the special matter, viz. his lease for years, the reversion in the plaintiff, and that he is in possession, &c. Dyce 246: Teel. Cest. 142. See title Leve 1. 1.

TERMS, Those spaces of time, wherein the Courts of Justice are open, for all that complain of wrongs or injuries, and for their rights by course of law or action, in order to their redress; and during which, the Courts in Westminster-Hall sit and give judgments, &c. But the High Court of Parliament, the Chancery, and inferior Courts, do not observe the Term; only the Courts of King's Bench, the Common Pleas, and Exchequer, the highest Courts at Common Law. Of these Terms there are four in every year, viz. Hilary Term, which begins the 23d of January, and ends the 12th of February (an-

feis on Sundays, and then the day after); Easter Term, that begins the Wednesday fortnight after Easter Day, and ends the Monday next after Ascension Day; Trinity Term, which begins the Friday after Trinity Sunday, and ends the Wednesday fortnight after; and Michaelmas Term, that begins the 22d of November, and ends the 28th of November (unless on Sundays, and then the day after).

These Terms are supposed by Sedles to have been instituted by William the Conqueror: But Selden hath clearly and learnedly shown, that they were gradually formed from the canonical constitutions of the Church, being indeed no other than those leisure seasons of the year, which were not occupied by the great festivals or faits, or which were not liable to the general avocations of rural busines. Throughout all Christendom, in very early times, the whole year was one continual Term for hearing and deciding causes. For the Christian Magistrates, to disburth themselves from the Heathens, who were extremely superstitious in the observation of their die festi, it was fitting, went into a contrary extreme, and administered justice upon all days alike. Till at length the Church imploled and exempted certain holy feasons from being profaned by the tumult of forensical litigations. As, particularly, the time of Advent and Christmas, which gave rise to the winter vacation; the time of Lent and Easter, which created that in the spring; the time of Pentecost, which produced the third; and the Long Vacation, between Midsummer and Michaelmas, which was allowed for the hay time and harvest. All Sundays also, and some particular festivals, as the days of the Purification, &c., were included in the same prohibition, which was established by a canon of the church, A. D. 541, and was fortified by an imperial constitution of the younger Theodore, comprised in the Theodosian code. Spenl. of the Terms.

Afterwards, when our own legal Constitution came to be settled, the commencement and duration of our Law Terms were appointed with an eye to these canonical prohibitions; and it was ordered by the laws of King Edward the Confessor, (c. 3, de temporibus & diebus pacis,) that from the Advent to the octave of the Epiphany, from Septuagesima to the octave of Easter, from the Ascension to the octave of Pentecost, and from three in the afternoon of all Saturdays till Monday morning, the peace of God and of Holy Church shall be kept throughout all the kingdom. And so extravagant was afterwards the regard that was paid to these holy times, that though the Author of the Mirror mentions only one vacation of any considerable length, containing the months of August and September; yet Britton is express, that in the reign of King Edward I., so secular pleasure could be held, nor any man scarce on the Evangelists, in the times of Advent, Lent, Pentecost, harvest and vintage, the days of the great Litaniies, and all solemn festivals. But he adds, that the Bishops did nevertheless grant dispensations, (of which many are preferred in Rymer's Fader,) that Affiles and Juries might be taken in some of these holy seasons. And soon afterwards a general dispensation was established by stat. Wesm. 1. 3 Edw. 1. c. 51; which declares, that, "by the assent of all the prelates, Assiles of novel diffilions, were d'au­­
of the King to the Bishops." The portions of time that were not included within these prohibited seasons, fell naturally into a fourfold division, and, from some festival day that immediately preceded their commencement, the Terms were named. The Terms of St. Hilary, of Easter, of the Holy Trinity, and of St. Michael; which Terms have been since regulated and abbreviated by several acts of Parliament; particularly Trinity Term by stat. 32 Hen. 8 c. 21, and Michaelmas Term by stat. 15 Car. 1 c. 6, and again by stat. 24 Geo. 2 c. 48.

There are in each of these Terms flat days called Days in Bank; (days in banc) that is, days of appearance in the Court of Common Bench. They are generally at the distance of about a week from each other, and have reference to some festival of the Church. On some one of these days in Bank, all original writs must be made returnable; and therefore they are generally called the Returns of that Term; whereas every Term has more or less, by the Murder to have been originally fixed by King Alfred, but certainly settled as early as the statute of 51 Hen. 3. f. 2. Now Easter Term hath five returns; and all the other Terms four. But though many of the return days are fixed upon Sunday, yet the Court never sits to receive their returns till the Monday after; and therefore no proceedings can be held, or judgment can be given, or supposed to be given, on the Sunday. See Salk. 627; 6 Mod. 270: 1 Jan. 156; Brum v. Brame: Bro. P. C.

The first return in every Term is, properly speaking, the first day in that Term; as, for instance, the octave of St. Hilary, or the eighth day inclusive after the feast of that Saint: which falling on the thirteenth of January, the octave therefore or first day of Hilary Term is the twentieth of January. And thence (one Judge of the Court) the Court sits to take ejoins, or excuses, for such as do not appear according to the summons of the writ: wherefore this is usually called the Ejoins Day of the Term. But on every return day in the Term, the persons summoned have three days of grace, beyond the day named in the writ, in which to make his appearance; and if he appears on the fourth day inclusive, (quaies die pofi.) it is sufficient. For our fluid ancestors held it beneath the condition of a Freeman to appear, or to do any other act, at the precise time appointed. Therefore, at the beginning of each Term, the Court does not usually sit for dispatch of business till the fourth or appearance day, as in Hilary Term on the 23d of January and in Trinity Term, by statute 32 Hen. 8 c. 21; nor till the fifth day, the fourth happening on the great popish festival of Corpus Christi; which days are therefore called and set down in the almanacs as the first days of the Term: And the Court also sits till the quaies die pofi. or appearance day of the last return, which is therefore the end of each Term. See 1 Bulst. 35: 3 Com. 18.

If the feast of Saint John the Baptist, or Midsummer Day, falls on the Morrow of Corpus Christi day, (as it did A. D. 1614, 1698, 1709, and 1791.) Trinity Term then commences, and the Court sits on that day; though in other years it is no juridical day. Yet in 1702, 1713, and 1724, when Midsummer Day fell on what was regularly the last day of the Term, the Courts did not then sit, but it was regarded like a Sunday, and the Term was prolonged to the twenty-fifth of June. Ret. C. E.; Bush. 176.

The whole Term in construction of Law is accounted but as one day to many purposes; for a plea that is put in the last day of a Term, is a plea of the first day of the Term and a judgment on the last day of Term is as effectual as on the first day. Ret. 23 Car. 2. B. R. See 1 Will. 37. And for this reason the Judges may alter and amend their judgments in the same Term, &c. See titles Judgment. Amendment. It has been held, that the Courts sit but in Term, as to the giving of judgments: The Judges of B. R. and C. B. before Trinity Term 1611, did not sit longer in Court than till one o'clock upon the last day of Term; because they would not encourage attorneys to neglect their clients' business till the last day of Term, as too commonly they do, to the soil of the Court, and too much hurry in dispatch. Mich. 22 Car. 2: Litt. 91.

Terms have been adjourned, and returns of writs and proceedings confirmed. Stat. 1. W. & M. c. 4.

The litigious Terms are Hilary and Trinity Terms only; they are so called, because in them the suits are joined and records made up of causes, to be tried at the Lent and Summer Assizes, which immediately follow. 2 Litt. Acr. 568. See title Assizes, &c.

By stat. 24 Geo. 2 c. 48, special days and returns may be appointed by the Judges in such cases as have been usual. The Days of Assize in divers places, and in a plea of quare impedit appointed by the statute of Marlborough; and the days to be given in attainder by stat. 5 E. 3, and also in stat. 23 H. 8, not being contrary to this act, shall be in force. Day for swearing the Lord Mayor of London is appointed for November nth, unless it be Sunday, and then the next day. The Morrow of St. Martin yearly, appointed for nominating Sheriffs in the Exchequer.

The Terms in Scotland are Martinmas, Candlemas, Whitmas, and Lammas; at which times the Court of Exchequer, &c. there is to be kept. Stat. 6 Ann. c. 6. The Terms of our Universities for Students, are different in time from the Terms of the Courts of Law.

Terms of the Law. Artificial or technical words and Terms of art, particularly used in and adapted to the profession of the Law. 2 Hawk. P. C. c. 23. § 87.

Terms for Payment of Rent, Or Rent Terms; the four quarterly feals upon which rent is usually paid. Cart. 6d. 21. See titles Rents; Leases.

Terms for Years. To secure payment of mortgages, and Terms to attend the inheritance. See titles Mortgages; Trusts; Usfs.

Terra, in all the Surveys in Domesday Register, is taken for arable land, and always so distinguished from the Pratum, &c. Ret. 1. Giff.

Terra Afferentia. Land let to farm.

Terra Boscall, Woody lands; according to an inquisition, 2d Car. 1.

Terra Culta, Land that is tilled or manured; as Terra Incola is the contrary. Mon. Ang. 1. 560.

Terra Deserta, Weak or barren ground. Ing. 22 R. 2.

Terra Dominica Vel Indominicata, The demesne land of a Manor. Cowell.

Terra Excultarilis, Land which may be ploughed. Mon. Ang. 1. 426.

Terra Extentenda, A writ directed to the escheator, &c. willing him to inquire and find out the true
true yearly value of any land, &c. by the oath of twelve men, and to certify the extent into the Chancery, &c. Reg. of Writs 293.

**Terra Frusca**, Fresh-land, or such as hath not been lately ploughed; likewise written Terra frisca. Mon. Aug. ii. 327.

**Terra Hydata**, Land subject to the payment of Hydaius; as the contrary was terra nova hydata. Selden.

**Terra Lucrabilis**, Land that may be gained from the sea, or inclosed out of a waste, to a particular use. Mon. Aug. 1. par. fol. 406.

**Terra Normanorum**, Such land in England as in the beginning of Henry III. had been lately held by some noble Norman, who, by adhering to the French King, or Dauphin, had forfeited his estate; which, by this means, became an escheat to the Crown, and restored, or otherwise disposed of at the King's pleasure. Parv. Antig. 1497.

**Terra Nova**, Land newly allotted and converted from wood ground to arable; terra novitur concellia. Spelman.

**Terra Putura**, Land in forests held by the tenure of furnishing man's meat, horse meat, &c. to the keepers therein. See Putora.

**Terra Sabulosa**, Gravelly or sandy ground. Ing. 10 Ed. 3. n. 3.

**Terra Vincta**, Is used in old charters for land foun with corn. Cowell.

**Terra Wainnabilis**, Tillable land. Cowell.

**Terra Warrennata**, Land that has the liberty of free wicket. Rot. Pavl. 21 Ed. 1.

**Terra Boscales**, Woody lands. Ing. 2. par. 8 Car. 1. mm. 71.

**Terra Testamentale**, Lands that were held free from feudal services, in allodium; or in scaccage, descendable to all the sons, and therefore called Gavel-kind, being divisible by will, were thereupon called Terra Testamentale, as the Thane who possessed them was said to be testamentarius, dies. See Spelman of Feuds, c. 5.

**Terra**, Terrage. Terragium. Seems to be an exemption à precario, viz. Boons of ploughing, reaping, &c. and perhaps from all land taxes, or from money paid for digging and breaking the earth in fairs and markets. Cowell.

**Terrar**, or Terrier; Territorium, catalogue Terrarum. A land-roll, or survey of lands, either of a single person, or of a town; containing the quantity of acres, tenants' names, and such like; and in the Exchequer, there is a Terrar of all the globe lands in England, made about 11 Ed. 3. See Stat. 18 Eliz. c. 17.


**Terraribus Cenobialis**, An officer in Religious Houses, whose office was to keep a terrar of all their estates, and have the lands belonging to the houses exactly surveyed and registered; and one part of his office was to entertain the better sort of convent-tenants, when they came to pay their rents, &c. Hist. Donelm.

**Terre-Tenant, Tertenant, Terra Ten- num.** He who hath the actual possession of the land; for example, a Lord of a manor has a freetholder, who leteth out his freehold to another, to be possessed and occupied by him, such other is called the Tertenant.
TESTAMENTARY GUARDIANS: See Guardian I. 4.

TESTAMENTARY JURISDICTION IN EQUITY; See Chancery.

TESTAMENTO ANNEXO; Administration cont. See title Executor II.

TESTATOR, Lat. He that makes a testament. See Swinhurn of Wills and Testaments. See also a Dissertation of the Probate of Wills or Testaments by the learned Sir Henry Spelman among his Remains, pag. 137; and this Dictionary, title Will.

TESTATUM-CAPIAS; See title Capias.

TESTE; (Witness;) That part of a writ wherein the date is contained; which begins with these words, Telle munifie, &c. if it be an original writ; or Telle the Lord Chief Justice, &c. if judicial. See Cl. Litt. 134; and this Dictionary, title Original; Writs.

TESTIMONIAL, A certificate under the hand of a Justice of the Peace, testifying the place and time, when and where a soldier or mariner landed, and the place of his dwelling and birth unto which he is to pass. 39 Eliz. c. 17. See title Vagrants. Formerly Testimonials were to be given by mayors and constables to servants quitting their services, &c. Stat. 5 Eliz. r. 4. See title Servants.

TESTIMONIALS OF CLERGY, Are necessary to be made by persons present, that a Clergyman inducted to a benefice hath performed all things according to the act of uniformity; to evidence that the clerk hath complied with what the Law requires on his institution and induction, which in some cases he shall be put to do. Count. Parl. Comp. 24. 26. See titles Perfun; Ordination.

TESTIMOIGNES, French, Witnesses; So Testi. moignes, Testimony. Lavo Fr. Diq.

TESTON, or TESTOON, Commonly called Teller, a fort of money which among the French did bear the value of 18d. but being made of brass lightly gilt with silver, in the reign of King Henry VIII., it was reduced to 12d. and afterwards to 6d. Lond. Hist. Eff. on Coins, p. 22.

TEXTUS, A Text or Subject of a discourse; It is mentioned by several ancient authors to signify the New Testament; which was written in golden letters, and carefully preferred in the churches.

TEXTUS MAGNI ALTARIS, We read of in Domof.
day and Cartular S. Edmund.

TEXTUS ROFFENSIS, An ancient manuscript containing the rights, customs, and tenures, &c. of the church of Reepham, drawn up by the Bishop of that See, anno 1114.

THAMES, See titles Rivers; London.

THANAGE OF THE KING, Thanesium Regis.] Signified a certain part of the King's land or property, whereof the ruler or governor was called Thane. Cowell.

THANE, From Sax. Theneian, ministrare.] Was the title of those who attended the English Saxons Kings in their Courts, and who held their lands immediately of those Kings; and therefore, in Domesday, they were promiscuously called thani et servientes Regis, though not long after the Conquest the word was diluted; and, instead thereof, those men were called Barones Regis, who, as to their dignity, were inferior to Earls, and took place next after Bishops, Abbeys, Barons, and Knights. There were also Thani minoris, and those were likewise called Barons: Thse were Lords of Manors, who had a particular jurisdiction within their limits, and over their own tenants in their Courts, which to this day are called

Courts Baron: But the word signifieth sometimes a nobleman, sometimes a freeman, sometimes a magistrate, but more properly an officer or minister of the King,

EDWARD King grants his Bishops, and more Barons, and all men Thagmen, on that therein, over more Princes in Paulus miller habund land Charta Edw. Conf. Pat. 18 H. 6. m. 9. pri Inpact. Lambard, in his Exposition of Saxon words, verb. Thanes; and Steane, de-nombr signif.

fay, That it is a name of dignity, equal with the son of an Earl.

This appellation was in use among us after the Nor.
man Conquest, as appears by Domesday, and by a certain writ of William the First. WILLIAMUS Rex judicat Herrmannum epijopum, & Stephinum, & Britwini, & omnes Thanes minori, in Domestre, pago amicibilit, MSS. de Abbatibus.—Camden says, They were enrolled only by the office which they administrad. Thanes Regi is taken for a Baron, in Inf. fol. 5. 1. And in Domesday, towns, qui caput maneri.

See Willis de Nobileitate, fol. 132. A Thane, at first, (in like manner as an Earl) was not properly a title of dignity, but of service. But according to the degrees of service, some of greater estimation, some of less. So those that served the King in places of eminence, either in Court, or Commonwealth, were called Thani superiores and Thani Regiis. Those that served under them, as they did under the King, were called Thani minoris, or the lesser Thanes. Cowell. See Spelman of Feuds, cap. 7.

THANE-LANDS, Such lands as were granted by charter of the Saxon Kings to their Thanes; which were held with all immunities, except the threefold necessity of expediens, repairs of castles, and mending of bridges.—Thane signifies also land under the government of a Thane. Steane. See titles Tenures; Revelland; Beckland.

THASCIA, A certain sum of money or tribute im.
posed by the Romies on the Britons, and their lands Leg. H. 1. c. 79.

THEATRES; See Play-houses.

THEFT, Furram, An unlawful felonious taking away of another man's moveable and personal goods, against the will of the owner. See titles Larceny; Robbery.

THEFT-BOTE, From the Sax. Thieb, i.e. Fur, & Bote, compenfaria.] The receiving of a man's goods again from a Thief, after stolen, or other amends not to pro.

fet the felon, and to the intent the Thief may escape, which is an offence punishable with fine and imprison,

ment, &c. H. P. C. 130. See titles Contempt of Felony; Misprision.

THELONIUM; or BREVE ESSE ENI QUIETI DE

THELONIO, A suit lying for the citizens of any city, or for burgesses of any town, that have a charter or pre.

scription to the same, to take them from toll, against the officers of any town or market, who would condemn them to pay toll of their merchandise, contrary to their said grant or prescription. F. N. B. fol. 126. See title Toll.

THELONMANNUS, The toll man, or officer who receives toll. Cartular Abbati, Glaston. MS. 446.

THELONIO RATIONIBILIS HABENDO; PRO

DOMINIS HABENTIBUS DOMINICA REGIS AD

ARMAM. A writ to him that hath of the King's dem.

enues in ice farm to recover reasonable ex of the King's tenures there, if his demeine hath been accustomed to be tolled, Reg. Orig. 87.
THEMMAJ GiM, A duty or acknowledgment paid by inferior tenants in respect of their tenement. Cawull.

THEMNICUM, A hedge-row, or dike-row. Lindus: Cawull.

THEODEN, In the degrees or distinctions of persons among the Saxons, the Earl or prime Lord was called Thane, and the King's Thane; and the Husbandman, or inferior tenant was called Teodan, or under Thane. See Sla. and ante, title Thane.

THEOWES, The Slaves, Captives, or Bondmen among our Saxons were called Theoves and Efnes, who were not counted members of the Commonsal, but parcels of their master's goods and subsistence. Spathman of Feuds, cap. 5.

THE-SAURUS, Was sometimes taken in old charters for the enumeration, the Treasury; and hence the Day's register preferred in the Treasury or Exchequer, when kept at Windsor, hath been often called Labor Theoauri. Chart. Q. Maud, wife of King Henry 1.

THETHINGA, A word signifying a tithing: Tithingannahs, a tithingman. Sax.

THÉL, or THEOWE, See Theowes.

THIEF-TAKER: See titles Felony; Reward.

THINGUS, The same with Thanes; a Nobleman, Knight, or Freeman. Comp. Jurisdict. 197.

THIRD-BORYOW, is used for a contible, by Lambard in his Duty of Confederacies, p. 6. And in the flat. 23 H. 8. c. 10. See Contible.

THIRDINGS, 1. The Third Part of the corn growing on the ground, due to the Lord for a Heriot on the death of his tenant, within the manor of Thorish in Cornwall. Elman. Toe.

THIRD-NIGHT-AWN-HINDE, trism noctium hospes.] By the Laws of St. Edward the Confessor, if any may lay a Third-Night in an inn, he was called a Third-Night-Awn-Hinde, for whom his host was answerable, if he committed an offence. The first night, Forman-Night, or Uncuth, (Sax. Unknown) he was reckoned a Stranger; the second night, Twa-Night, a guest; and the third night, an Awen-Hinde, or Awn-Hinde, a domestic. Brad. 11b. 3.

THIRD-PENNY: See Demarina tertium Comitatums.

THISTLE-TAKE. It was a custom within the manor of Halton in the county palatine of Chester, that if in driving beasts over the common, the driver permits them to graze, or take a Thistle, he shall pay a halfpenny a beast to the Lord of the fee. And at Exeter in Nottingham, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the Lord a penny, which purchase of leave to kill a hog was also called Thistle-take. Rex. Priorat. de Uxuragion. Canwell.

THOSKES, Fish with broken bellies, flat. 22 E. 4. 52; which by the said statute are not to be mixt or packed with tale-fish.

THORP, THRIP, TROP, Either in the beginning or end of names of places, signifies a street or village, as Alderhop: From the Sax Thorp, villa, vico.

THRANE OF CORN, Trina blatts, from the Sax. Thorane, a bundle, or the Brith drafa, twenty-four.] In most parts of England, consists of twenty-four sheaves, or four flocks, its sheaves to every flock, flat. 2 H. 6. c. 2; yet in some counties they reckon but twelve sheaves to the Thrane. King Athelstan, anno 924, gave by his charter to St. Joan of Beverley's Church, four Thraves of Vol. II.

Corn, from every plough-land in the East Riding of Yorkshire. Cawul.

THREAD: Is liable to certain duties on importation. Regulations as to reeling Ounce or Yard's Thread. Stat. 28 Geo. 3, c. 17.

THREATENING LETTERS. By flat. 9 Geo. 1. c. 22, (amended by flat. 27 Geo. 2, c. 15,) Knowingly to send any Letter without a name, or with a fictitious name, demanding money, venison, or any other valuable thing, or threatening (without any demand) to kill or fire the house, out-houses, barns, or ricks of any person, is made felony without Benefit of Clergy. This offence was formerly High Treaton, by the flat. 8 Eliz. 3, c. 6. It has been determined that if the writer of a Threatening Letter delivers it himself, and does not send it by any other, he is not guilty of felony under this act. Leach 151.

By flat. 30 Geo. 2, c. 24. If any person shall knowingly send or deliver any Letter or Letters, threatening to accuse any person of a crime punishable with death, transportation, pillory, or other infamous punishment, with a view to extort from him any money or other valuable chattels, he is punishable at the discretion of the Court, with fine, imprisonment, pillory, whipping, or transportation for seven years.

THREATS. Threats and menaces of bodily hurt, through fear of which a man's business is interrupted, are a species of injury to individuals. A menace alone, without a consequent inconvenience, makes not the injury; but to complete the wrong, there must be both of them together. The remedy for this is in pecuniary damages, to be recovered by action of trespass or &c. Here, this being an inchoate, though not an absolute via, seeing that no person has a right to peace, &c. Without a name, or with a

THRENGES, 'Zuia were non enim adhibere tempore Regis Williami militiae in Anglia, sed Threnges, præcipit Rex ut de eis militis fierent ad defendendum terram, secit autem Lanfrancus Threngos fias milites, &c. Somner's Gospel. 123, 210. They were vassals, but not of the lowest degree, of those who held lands of the chief Lord; the name was imposed by the Conqueror; for when one Edward Sharnbourn of Normandy, and others, were ejected out of their lands, they complained to the Conqueror, mentioning, that they were always on his aide, and never opposed him, which upon inquiry he found to be true, and therefore he commanded that they should be restored to their lands, and for ever after be called Drenchers. Spelun. See titles Denketh; Sharnburna.

THREMSA, Sax. Threm. Three.] An old piece of money of three shillings, according to Lambard, or the third part of a thilling, being a German coin palling for .4d. Sedl. Tit. Hosp. 604.


THUDE-WEALD, Sax.] A woodward, or perfan that looks after the woods.

THUMELUM, A thamb. Leg. Inc. cap. 55. apud Brepona.

THWERTNICK, A Saxon word, which in some old Writers is taken for the custom of giving entertainments to the Sheriff, &c. for three nights. Rot. 11 & 12 Rich. 2.

TIDES-
TIDES

TIDESMEN, Are certain Officers of the Customs, appointed to watch or attend upon ships, till the customs are paid; and they are so called, because they go aboard the ships at their arrival in the mouth of the Thames, and come up with the tide. See title Customs.

TIERCE, Fr. Tiers, i.e. a third.] A measure of wine, oil, &c. containing the third part of a pipe, or forty-two gallons. Stat. 32 H. 8. c. 14.

TIGU, Sax. Tig. [A close or inclosure, mentioned in ancient charters; which word is still used in Kent in the same sense. Chart. Eicol. Cont.

TILDA, Sax.] An accusation; li. Cant.

TILES; See Bricks and Tiled.

TILLAGE, Agriculture.] Is of great account in Law, as being very profitable to the Commonwealth; and therefore, able land hath the preference before meadows, pastures, and all other ground whatsoever: And so careful is our Law to preserve it, that a bond or condition to refrain Tillage, or sowing of lands, &c. is void. 11 Rep. 53. There are divers ancient statutes for encouragement of Tillage and Husbandry, now become in a great measure, if not altogether, obsolete.

TILTING; See title Homicide II. 1.

TIMBER; Wood fited for building, or other such use; in a legal sense it extends to oak, ash, and elm, &c. 1 Roll. Abr. 519. See forge. Lests of land may not take Timber-trees felled by the wind; for thereby their special property ceases. 1 Keb. 691.

The importation, &c. of Timber is regulated by divers Statutes.

Against cutting up, barking, or destroying of Timber; stat. 1 Geo. 1. b. 2. c. 48. See title Woods.

Oak Timber, (except for building,) to be felled in April, May, and June; stat. 1 Jac. 1. c. 22. f. 20.

By stat. 6 Geo. 3. c. 36, Any one who shall, in the night-time, leap, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy, or carry away, any oak, beech, ash, elm, fir, chestnut, or sap, Timber-tree, or other tree or trees, standing for Timber, or likely to become Timber, without the consent of the owner; or shall, in the night-time, pluck up, dig up, break, spoil or destroy, or carry away, any root, shrub, or plant, roces, shrubs, or parts of the value of five shillings, and which shall be growing, standing, or being in the garden-ground, nursey-ground, or other inclosed ground, of any person or persons whatsoever; shall be deemed and conclusively to be guilty of felony, and the offenders may be transported. Those who are affilting, and purchasers, knowing the things to be stolen, shall be liable to the same punishment, as if they had stolen the same.

By stat. 6 Geo. 3. c. 48, Every person convicted of damaging, destroying, or carrying away any Timber-tree or trees, or trees likely to become Timber, without the consent of the owner, &c. shall forfeit for the first offence not exceeding 30l. with the charges attending; and on non-payment, are to be committed for not more than twelve, nor less than six months; for the second offence, a sum not exceeding 50l. and, on non-payment, are to be committed for not more than eighteen, nor less than twelve months; and for the third offence are to be transported for seven years. All oak, beech, chestnut, walnut, ash, elm, cedar, fir, alp, lime, fycamore, and birch trees, shall be deemed and taken to be Timber-trees within the meaning of the A3.

Persons convicted of plucking up, spoiling, or taking away, any root, shrub, or plant, out of private cultivated ground, shall forfeit for the first offence any sum not exceeding 40s. with the charges; for the second offence, a sum not exceeding 5l. with the charges; and for the third offence, are to be transported for seven years. Persons hindering, or attempting to prevent seizing offenders, shall forfeit 10l. to the person convicting them; and, if not paid down, to be committed to hard labour, not exceeding six months. See title Mischiefs, Malicious.

TILING, A service by which tenants were to carry Timber felled from the woods to the Lord's house. Story's Chanc. 264.

TIME and Places, Are to be set forth with certainty in a declaration; but Time may be of some circumstance when a thing was done, and not to be made part of the issue, &c. 5 Mod. 286. It has been held, that an impossible Time is no Time; and where a day or Time is appointed for the payment of money, and there is no such Time, the money may be due presently. 1892. 5 Rep. 22.

If no certain Time is implied by Law for the doing of any thing, and there is no Time agreed upon by the parties, then the Law doth allow a convenient Time to the party for the doing thereof, i. e. as much as shall be adjudged reasonable, without prejudice to the doer of it. 2 Litt. Abr. 572. In some cases one hath Time during his life for the performance of a thing agreed, if he be not haled to do it by requital of the party for whom it is to be done; but if in such case he be haled by requital, he is obliged to do it in convenient Time, after such requital made. 82 Cas. 1. B. R.

Time, taken generally, hath also its Time: What is done in Time of peace, the Law doth more countenance than in Time of war; in case of bar of an estate, or other inclosure, this is not time, but if in such case he be haled by requital, he is obliged to do it in convenient Time, after such requital made. 82 Cas. 1. B. R.

Regularly, there cannot be any fraction in a day. See 20 Vin. Abr. and the several apposite titles in this Dictionary.

TINEL LE ROY, Fr.] The King's hall wherein his servants used to dine and sup. Stat. 15 R. 2. b. 1. c. 3.

TINEMAN, or TIENTHMAN, A petty officer in the forest, who had the nocturnal care of vert and venison, and other servile employments. Const. Forst. Caudi. Regis, cap. 4.

TINET, Timetum.] Bruswood and thorns, to make and repair hedges: In Herefordshire to site a gap in a hedge is to fill it up with thorns, that cattle may not pass through it. Chart. 21 Hen. 6.

TINEWALD, The ancient parliament or annual convention of the people of the Isle of Man, of which this account is given: — The Governor and Officers of that Island do usually call the twenty-four Keys, being the chief commons thereof, especially once every year, viz. upon Midsummer-day, at St. John's Chapel, to the Court kept there, called the Tinewald Court, where, upon a hill near the said chapel, all the inhabitants of the Island
TIN

TITHE.

I. Of the Origin of Tithes; and to whom they are payable.

II. Of what Tithes are in general due; and where personal Tithes are due.

III. Of what predestined Tithes are due; and wherein, of the Tithes of Agreements, Corn, Hay, and Wood.

IV. Of what mixed Tithes are due.

V. Of recovering Tithes in the Ecclesiastical or Temporal Courts; or in a summary Way; against Quakers; and in London.

VI. Of particular Things for which Tithes are paid; and for which not; in alphabetical Order.

VII. Who may be discharged, either totally or in part, from paying Tithes.

1. Bishop Barlow, Selden, Father Paul, and others, have observed, that neither Tithes our ecclesiastical benefits, (which are correlative in their nature,) were ever heard of for many ages in the Christian Church; or pretended to be due to the Christian Priests; and, as that Bishop affirms, no mention is made of Tithes in the grand code of Canons, ending in the year 451, which, next to the Bible, is the most authentic book in the world; and that it thereby appears, during all that time, both Churches and Churchmen were main lined by free gifts and obligations only. Barlow's Remarks, p. 169; Selden of Tithes 82; See Warthon's Complete Incumbents, p. 344, &c.

Selden contends, that Tithes were not introduced here into England, till towards the end of the eighth century, i.e. about the year 786; when parishes and ecclesiastical benefits came to be settled; for it is said, Tithes and ecclesiastical benefits being correlative, the one could not exist without the other; and whenever any ecclesiastical person had any portion of Tithes granted to him out of certain lands, this naturally constituted the benefit; the granting of the Tithes of such a manor or parish being, in fact, a grant of the benefit; as a grant of the benefit did imply a grant of the Tithes: And thus the relation between parsons and incumbents was analogous to that of Lord and Tenant by the feudal Law. Selden of Tithes 80, &c.

Of all the Saxon Kings of his time in this Island, none of the most potent of all the Saxon Kings of his time in this Island, made a law, whereby he gave unto the Church the Tithes of all his kingdom, which the Historians tell us was done to expiate for the death of Ethelbert, King of the East Angles, whom in the year preceding he had caused falsely to be murdered. But that Tithes were before paid in England by way of offerings, according to the ancient usage and decrees of the Church, appears from the canons of Egborg, Archbishop of York, about the year 750, and from an epistle of Boniface, Archbishop of Mentz, which he wrote to Caubler, Archbishop of Canterbury about the same time; and from the seventeenth canon of the general Council held for the whole kingdom at Chalcedon, in the year 787. — But this law of Ofa was that which first gave the Church a civil right in them in this land, by way of property and inheritance, and enabled the Clergy to gather and recover them as their legal due, by the coercion of the civil power. Yet this establishment of Ofa reached no farther than the kingdoms of Mercia, (over which Ofa reigned,) and Northumbrian, until Ethelwold, about sixty years after, enlarged it for the whole Realm of England. Prideaux on Tithes 166, 167. See post.
TIThes I.

It is said, Tithes, Oblations, &c. were originally the voluntary gifts of Christians, and that there was not a law before that of the fourth Council of Lateran, anno Dom. 1215, that required Tithes to be due of common right. 2 Wel. 182. But this seems very contrary to other opinions.

Blackstone says, he will not put the title of the Clergy to Tithes upon any divine right; though such a right certainly commenced, and as certainly ceased, with the Jewish Theocracy. Yet an honourable and competent maintenance for the Ministers of the Gospel is, undeniably, due divinly; whatever the particular mode of that maintenance may be. For, besides the positive precepts of the New Testament, natural reason will tell us, that an order of men, who are separated from the world, and excluded from other lucrative professions, for the sake of the rest of mankind, have a right to be furnished with the necessaries, conveniences, and moderate enjoyments of life, at their expense for whose benefit they forego the usual means of providing them. Accordingly all Municipal Laws have provided a liberal and decent maintenance for their national Priests or Clergy; ours, in particular, have established this of Tithes, probably in imitation of the Jewish Law; and perhaps, considering the degenerate state of the world in general, it may be more beneficial to the English Clergy to found their title on the Law of the land, than upon any divine right whatsoever, unacknowledged and unsupported by temporal functions. 2 Comm. c. 3.

It has been well observed, that the Clergy have precisely the same right to Tithes, as the heir at law has to his ancestor's estate, or the farmer to the possession in consequence of his lease; and the proprietor has no more reason to complain that his land is not Tithe free, than that his neighbour's field is not his own. Christian's note on 2 Comm. 25.

We cannot (continues the Commentator) precisely affirm the time when Tithes were first introduced into this country. Possibly they were contemporary with the planting of Christianiety among the Saxons, by Alcuin the monk, about the end of the fifth century. But the first mention of them in any written English Law appears to be in a constitutional decree, made in a Synod held A. D. 756., wherein the payment of Tithes in general is strongly enjoined. Selden, c. 8. § 2. This Canon, or decree, which at first bound not the Lait, was effectually confirmed by two kingdoms of the Heptarchy, in their parliamentary conventions of estates, respectively consisting of the Kings of Mercia and Northumberland, the Bishops, Dukes, barons, and People; which was a few years after the time that Charlemagne established the payment of them in France, (A. D. 778.) and made that famous division of them into four parts; one to maintain the edifice of the Church, the second to support the Poor, the third the Bishop, and the fourth the Parochial Clergy. Seld. c. 6. § 7: Spirit of Laws, b. 31. c. 12.

The next authentic mention of them is in the Fodat Edicti de Munibus; or the Laws agreed upon between King Guthrum the Dane, and Alfred and his son Edward the Elder, successive Kings of England, about the year 900. This was a kind of treaty between those Monarchs, which may be found at large in the Anglo-Saxon Laws: Wherein it was necessary, as Guthrum was a Pagan, to provide for the subsistence of the Christian Clergy under his dominion; and, accordingly, we find the payment of Tithes not only enjoined, but a penalty added upon non-observance. Which Law is confirmed by the Laws of Alfred, about the year 910. And this is as much as can certainly be traced out, with regard to their legal original. See Wilkins, p. 51: 2 Comm. c. 5.

Upon the first introduction of Tithes, though every man was obliged to pay Tithes in general, yet he might give them to what priests he pleased; which were called arbitrary confecrations of Tithes: Or he might pay them into the hands of the Bishop, who distributed among his dioceesan Clergy the revenues of the Church, which were then in common. 2 Inst. 546: Hid. 296: Seld. c. 9. § 4. But, when dioceees were divided into parishes, the Tithes of each parish were allotted to its own particular Minster; first by common consent, or the appointments of Lords of Manors, and afterwards by the written Law of the land. 2 Inst. 546: Can. c. 11.

However, arbitrary confecrations of Tithes took place again afterwards, and became in general use till the time of King John. Selden, c. 11. This was probably owing to the intrigues of the regular Clergy, or monks of the Benedictine and other rules, under Archbishop Dunstan and his successors; who endeavoured to wean the people from paying their dues to the secular or parochial Clergy, (a much more valuable set of men than themselves,) and were then in hopes to have drawn, by fanctimonious pretences to extraordinary purity of life, all ecclesiastical profits to the coffers of their own societies. And this will naturally enough account for the number and riches of the Monasteries and Religious Houses which were founded in those days, and which were frequently endowed with Tithes. For a layman, who was obliged to pay his Tithes somewhere, might think it good policy to erect an abbey, and there pay them to his own monks; or grant them to some abbey already erected; since, for this donation, which really cost the patron little or nothing, he might, according to the supersession of the times, have makes for ever long for his soul. But, in process of years, the income of the poor laborious parish priests being scandalously reduced by these arbitrary confecrations of Tithes, it was remedied by Pope Innocent III. about the year 1200, in a decreal episcopal sent to the Archbishop of Canterbury, and dated from the palace of Lateran; which has occasioned Sir Henry Baker and others to mistake it for a decree of the Council of Lateran, held A. D. 1179, which only prohibited what was called the infedation of Tithes, or their being granted to mere laymen, whereas this letter of Pope Innocent to the Archbishop enjoined the payment of Tithes to the Parochians of the respective parishes where every man inhabited, agreeable to what was afterwards directed by the same Pope in other countries. This epistle, says Coke, bound not the Lay Subjects of this Realm; but, being reasonable and just, (and, he might have added, being correspondent to the ancient Law) it was allowed of, and became Lex terrae. 2 Inst. 641. This put an effectual stop to all the arbitrary confecrations of Tithes; except some footsteps which still continue in those portions of Tithes, which the Parson of one parish hath, though rarely, a right to claim in another; for it is now universally held, that Tithes are due, of common right, to the Parson of the parish.
T I T H E S I—III.

parish, unless there be a special exemption. Regist. 46: Hob. 296. This Parson of the parish, we have formerly seen, may be either the actual incumbent, or else the appropriator of the benefice; appropriations being a method of endowing Monasteries, which feems to have been devised by the regular Clergy, by way of obfervation of arbitrary confecrations of Tithes. In extraparochial places, the King, by his royal prerogative, has a right to all the Tithes, 2 Rep. 2, 44: 2 Inft. 64. See 2 Comm. c. 3.

II. In general, Tithes are to be paid for every thing that yields an annual increafe, as corn, hay, fruit, cattle, poultry, and the like: but not for any thing that is of the substance of the earth, or is not of annual increafion; as flone, lime, chalk, and the like: nor for creatures that are of a wild nature, as deer, hawks, Etc.; whose increafe, so as fo profit the owner, is not annual, but casual; though for deer and rabbits Tithes may be payable by special cuftom. 2 Comm. c. 3 & 6.

Tithes are due either de jure, or by cuftom: All Tithes which are due de jure, arise from such fruits of the earth as renew annually; or from the profit that accrues from the labour of a man. Hence it follows, that such Tithes can never be part of, but must always be collateral to, the land from which they arise. 11 Rep. 13, 14.

Nay, Tithes due de jure are so collateral to every kind of land, that if a lease is made of the glebe belonging to a rectory, with all the profits and advantages thereof; and there is besides a covenant, that the rent to be paid shall be in full satisfaction of every kind of exaction, and demand, belonging to the rectory; yet, as the glebe is not expressly discharged of Tithes, the lessee shall be liable to the payment thereof. 11 Rep. 13, 14: 1 Roll. Abr. 635 pl. 1: Cron. Eliz. 162, 261: Cron. Car. 562.

No Tithes are due de jure of the produce of a mine or of a quarry; because this is not a fruit of the earth renewing annually; but is the substance of the earth, and has perhaps been so for a great number of years. P. N. B. 53: Bro. Dijin. pl. 18: 2 Inft. 651: 1 Roll. 637: Cron. Eliz. 277.

No Tithes are due de jure of any thing (generally) which is part of the soil, and does not renew annually; but it may be due by cuftom. Vide 2 Term. 45: 1 Roll. Abr. 637: pl. 5: 2 Med. 77: 1 Med. 35: 1 Roll. 642: 8 pl. 7, 8.

No Tithes are due de jure of houses; for Tithes are only due de jure of such things as renew from year to year. 11 Rep. 16. Grant's cafe. But houses in London are, by decree, which was confirmed by an Act of Parliament, made liable to the payment of Tithes. 2 Inft. 659. See juris. 57 H. 8. c. 12: 25 & 26 C. 2. c. 15. Before this decree, houses in London were by cuftom liable to pay Tithes; the quantum to be paid being thereby only settled, as to such houses for which there was no cuftomary payment. 1 Inft. 659: Hard. 116: Gib. 3. Rep. 176. See p. 245. There is likewise a custom in most ancient cities and boroughs, a custom to pay Tithes for houses; without which there would be no maintenance in many parishes for the Clergy. 11 Rep. 16: Bubb. 102.

It was held by three Barons of the Exchequer, Prior, Montague, and Page, contrary to the opinion of Bury, Chief Baron, that two Tithes may be due of the same thing, one de jure, the other by cuftom. Bubb. 43.
as apples, pears, acorns, &c. All kinds of seeds, as
turnip-seed, parley-seed, rape-seed, carraway-seed, anise-
seed, clover-seed, and beans and peas if sown in a gar-
den. Shewn by Law of Tithes.

As it would be tedious to enumerate all the things
which are liable to predial Tithes, only those shall be
mentioned concerning the Tithes of which some que-
tion has arisen; but, from such as will be mentioned, it
may be easily collected of what other things predial
Tithes are due.

Agistment. Agisting, in the first sense of the
word, means the depasturing of a beast the property of
a stranger. But this word is constantly used, in the
Books, for depasturing the beast of an occupier of land,
as well as that of a stranger. New Abr. 53. The Tithe
of Agistment is the tenth part of the value of the keep-
ing or depasturing such cattle as are liable to pay it.
Agistment is derived from the French gester, gisier (ja-
cre); because the beasts are levant and confinuant during
the time they are on the land. Agistment Tithe seems
rather a mixed than strictly a predial Tithe.

An occupier of land is not liable to Tithe for the
pature of horses, or other beasts, which are used in hu-
bandry in the parish in which they are depastured.
Because the Tithe of corn is by their labour increased.
446. Ed. Raym. 130. But if horses or other beasts are
used in husbandry out of the parish in which they are
depastured, an Agistment Tithe is due for them. 7 Med.
114. Ed. Raym. 130. It seems to be the better opinion, that no Tithe is
due for the pature of a saddle-horse, which an occupier
of land keeps for himself or servants to ride upon. 1 Roll.
No Tithe is due for the pature of milk-cattle, which are
milked in the parish in which they are depastured; be-
cause Tithe is paid of the milk of such cattle. 1 Roll.
Abr. 646. pl. 2. Ed. Raym. 130. Cro. Eliz. 446.
Milk cattle, which are reserved for calving, shall pay
No Tithe for their pature whilst they are reared. But if they
are afterwards sold, or milked in another parish, an Agis-
tment Tithe is due for them. Ed. Raym. 130. No Tithe is
due from an occupier of land, for the pature of young cattle, reared to be used
in husbandry, or for the pail. Cro. Eliz. 476. But if such
young beasts are sold, before they come to such perfection
as to be fit for husbandry, or before they give milk, an
Agistment Tithe must be paid for them. Ed. 85.

An occupier of land is liable to an Agistment Tithe,
for all such cattle as he keeps for sale. Cro. Eliz. 445,
But if any cattle, which have neither been used in hu-
bandry, nor for the pail, are, after being kept some time,
killed, to be spent in the family of the occupier of the
land on which they were depastured, no Tithe is due for
their pature. Tuck. 281. pl. 6; Cro. Eliz. 446, 476;
Cro. Car. 257. It is in general true, that an Agistment
Tithe is due, for depasturing any part of cattle the prop-
Burnb. 1; Freem. 329. No Tithe is due for the cattle,
either of a stranger or an occupier, which are depastured
in grounds that have in the same year paid Tithe of hay.
Burnb. 10, 79; Pops. 142; 2 Roll. Rep. 191.

No Agistment Tithe is due for such beasts, either of
a stranger or an occupier, as are depastured on the head-
lands of ploughed fields; provided that there are not
wider than is sufficient to turn the plough and horses
upon. 1 Roll. Abr. 646. pl. 19. No Tithe is due for
such cattle as are depastured upon land that has the same
If land, which has paid Tithe of corn in one year, is left
unplowed the next year, no Agistment is due for such land;
because, by this lying fallow, the Tithe of the next crop
of corn is increased. 1 Roll. Abr. 642. pl. 9. But if
land, which has paid Tithe of corn, is suffered to lie
fellow longer than by the course of husbandry is usual,
an Agistment Tithe is due for the beasts depastured upon
such land. Ship. Abr. 1008.

As the question, whether an Agistment Tithe is due
for sheep, does not seem to be quite settled, it will not be
amiss to refer to the principal cases in which this has
been ascertained, which are, 1 Roll. Rep. 63. pl. 7; 1 Roll.
Abr. 643, 644. pl. 8. Pops. 197. Cro. Car. 207. 1
Roll. Abr. 647. pl. 13; Burnb. 90; Gild. Rep. in Equity
231: Burnb. 313.

This depends on the question, whether there is a new
increase; as if, after shearing, the sheep are fed on tur-
mips, which, if severed, would be tithable. See Sowells.
P. C. 192: Burnb. 314.

There is a peculiar difficulty attending this Tithe,
that it cannot be taken in kind; custom is therefore the
principal rule to go by in payment of it; and the old
decisions on the subject vary so much, that it would be
difficult to obtain any general inference from them.
— Burm. says, in all cases, the Tithe of Agistment of barren

and unprofitable cattle is to be paid according to the
value of the keeping of each per week; and the value of
the keeping of a sheep, beast, or horse, upon any par-

ticular lands, is easily ascertained from the usual prices
given for their depasture per week in the neighbourhood,
where profitable cattle are kept at the same time upon
the lands, together with them, or not. 3 Burnb. Et. L.
488.

The parson, vicar, or other proprietor of the Tithe,
is entitled to Agistment Tithe de jure; because the graz-

als which is eat is of common right tithable. Ed. Raym.
137: 2 Smith. 615: 2 Inl. 651.

Corn.—It is laid down in some books, that no Tithe
is due of the rakings of Corn involuntarily scattered. 1
Roll. Abr. 645. pl. 11; Cro. Eliz. 278: From. 335;
Moor. 278. But if more of any fort of corn is involun-
tarily scattered, than, if proper care had been taken,
would have been scattered, Tithe is due of the rakings
of such Corn. Cro. Eliz. 475: Freem. 335. And it has
been laid by Holt, Ch. 7, that Tithe is due of the rakings
of all corn, except such as is bound up in sheaves.
12 Med. 235. No Tithe are due of the stubbles left in
Corn-fields, after moving or reaping the Corn, 2 Inl.
261: 1 Roll. Abr. 646. pl. 14. See pp. VI.

Hay.—Tithe of Hay is to be paid, although beasts of
the plough or pail, or sheep, are to be fed with such
Abr. 650. pl. 12: 12 Med. 497. But no Tithe is due
of Hay grown upon the headlands of ploughed grounds,
provided that such headlands are not wider than is suf-
ficient to turn the plough and horses upon. 1 Roll.
Abr. 646. pl. 19. See pp. VI. It is laid down in one old eafe,
that if a man cuts down grass, and, while it is in the
sweaters, carries it away and gives it to his plough cattle, not
having sufficient sustenance for them otherwise, no
Tithe is due thereof. 1 Roll. Abr. 615. Crawley v.
Wells, Micb. 9 Cor. 1. In one case, the Court of Ex-
chequer seemed to be of opinion, that no Tithe is due of
vetches or clover, cut green, and given to cattle in
husbandry. Banc. 279. But in another case, it was
afterwards held, that the right to Tithe of Hay accrues
upon mowing the grass, and that the subsequent applica-
tion of this, while it is in grass, or when it is made
into Hay, shall not, although beasts of the plough or
pail

are eaten with it, take away this right. 12 Mod. 498. And
the doctrine of this last case coincides with that of an old
case, in which it was held, that taxes cut green, and
given to beasts of the plough, may, by special custom,
be exempted from the payment of Tithes; from whence it
follows that such taxes are not exempted at

12 Mod. 498. See p. 60 VI.

It is laid down in some books, that no Tithe is due
of aftermowth Hay; because Tithe can only be due
once in the same year from the same land. F. N. B. 53:
Jov. 42: Lord Raym. 243. But it is held in other
books, that Tithe is due of aftermowth Hay: 1 Roll.
Abr. 64: pl. 11: Cro. Eliz. 660: Cro. Jacl. 115:
Cro. Cas. 403: 12 Mod. 498: Banc. 10. And the
principle upon which the doctrine, that no Tithe is due
of aftermowth Hay, is founded, is denied in some
modem cafes.

In some of them it is laid down, that Tithes shall be
paid of divers crops grown upon the same land in the
same year. Banc. 19: 314. In others it is held, where-
ever there is, in the same year, a new increase from the
same thing, Tithe is due. Banc. 9: Guild. Rep. in

Eq. 231.

Wood — Tithe of Wood is not due of common right,
because Wood does not renew annually: But it was, in very
ancient times, paid in many places by custom. 2 Inf.
642: 12 Mod. 111: Salt. 676: Comb. 404: Banc. 61.

A constitution was made, in the seventeenth year of
the reign of Edward the Third, by John Stratford, Arch-
bishop of Canterbury, that Tithes shall be paid, within
this province, of fibra caduca. 2 Inf. 642: Palm. 377: 38.

Several petitions having been presented to the King,
complaining of the Clergy for taking Tithe of Gros-
wood and Underwood, by virtue of this constitution; and length,
the answer was made in these words: "At
the complaint of the great men and commoners, flowing
from their petition, that when they fell their Gros-wood, of
the age of 20 or 30 years, and of a greater age, to
merchants, to their own profit, and to the aid of the
King in his wars, the Parliaments and Vicars of Holy
Church do in-land and trouble the said merchants, in Court
Christian, for the Tithe of the said Wood, under the
denomination of fibra caduca, by the reason of which they
cannot sell their Wood for the real value, to the great
damage of themselves and the Realm; it is ordained and
established, that a prohibition in this case shall be grant-
ed, and upon the same an attachment, as it hath hitherto
been." Stat. 45 Edw. 3: 6: 3.

From the petitions and answers, from this statute, and
from books of the best authority, it appears plainly, that
no Tithe of Gros-wood was due at the Common
Law; and that the demand thereof as such, by virtue
of the constitution made by the Archbishop, was an
encroachment. 2 Inf. 642: Stat. 45 Edw. 3: 6: 3:

After the making of this statute, prohibitions were
constantly granted to suits instituted in Spiritual Courts
for Tithes of Gros-wood. But two questions often arose:
what is Gros-wood? and of what age Gros-wood must
be before it is exempted from the payment of Tithe

2 Inf. 643: 644: 645.

For the putting an end to these, it hath been long
settled, that by Gros-wood is not meant small Wood,
not large Wood, but such Wood as generally, or by the
custom of a particular part of the country, was used as
timber; and that all such Wood, if of the age of 20 years,
is exempt from the payment of Tithe. 2 Inf. 643: 644:
Cro. Eliz. 1: 12 Mod. 524: Banc. 127. Oaks, ashes,
and elms, being universally used as timber, it has been
always held, that such trees, if of the age of 20 years,
are Gros-wood. 2 Inf. 642. It hath been held, upon
great deliberation, (notwithstanding what is laid down
by the contrary in Plowd. 470) that a hornbeam tree,
if of the age of 20 years, is Gros-wood, because this is
used in building and repairing. It has for the same
reason been held, that an aspen-tree, of the age of 20
years, is Gros-wood. 2 Inf. 643.

A difficulty often occurs in fixing the exact age of
timber; to avoid this, in many places where Wood is
plentiful, it is the custom to estimate the same by mea-
suring round the middle part of the tree, and if it is
24 inches in circumference, it is deemed 20 years
growth; but if under that measure, it is accounted

Tithes are not in the general due of beech, birch,
hazel, willow, alder, maple, or white-thorn

trees, or of any fruit-trees, of whatsoever age they are;
because these are not timber. Plowd. 470: Cro. Eliz.
377: 1 Cro. Jov. 103: 1 Roll. Abr. 640: pl. 5: pl. 6:
Brow. 24. But, if the Wood of any of these trees is
used in a particular part of the country, where timber is
scarce, in building and repairing, no Tithe is due of such
Wood, if of the age of 20 years, in that part of the coun-
try. Rol. 289: Brow. 24. It is laid down in several
old books, that if a timber-tree, after it is of the age
of 20 years, decays in so as to be unfit to be used in build-
ing, no Tithe is due of the Wood of this tree, because
it was once privileged. 11 Rep. 48: Cro. Eliz. 377: 2

If the Wood of a coppice has been usually felled for
firing, such Wood shall pay Tithe, although it stand till it
be 40 years of age. Sid. 320: 1 Leo. 185.

If, when the Wood of coppice is felled, some trees
growing therein, which are of the age of 20 years, and
have never been lopped, are lopped, and these loppings
are promiscuously bound up in haggots with the coppice-
wood, Tithe must be paid of the whole; because it would
be very difficult to separate the saleable Wood from that
which is not so, and the owner ought to suffer for his
folly in mixing them. Wall. v. Tryon, 5 Bac. Abr.

If the Wood of a timber-tree is sold for firing, it was
determined in one case, that although the tree was of the
age of 20 years, it was liable to pay Tithe. Banc. 29:
Greenway v. The Earl of Kent. The Reporter of this
case mentions four others, in which the same had been
held.
held; and says, that it was in one of them laid down, that the Wood of timber-trees is only exempted from the payment of Tithe, on the account of its being used in building.

The contrary doctrine, however, of the old books, was confirmed by a subsequent case in the Court of Chancery. A bill being brought for Tithe of the loppings of timber trees, which had been sold for firing, it was infinited that this Wood, which would otherwise have been exempted from the payment of Tithe, was liable thereto, because it was sold to be used for firing; and the cases just now cited were relied upon. But the bill was dismissed; and by Hardwicke, Chancellor,—In the case in 1 Lev. 189, and xil. 350, the Wood in question was coppice-wood, which had been usually sold for firing; and such Wood, of whatever age it is, is always tithable. The case of Greenaway and the Earl of Kent is quite a singular one, and is not Law; for in the case of Bilby and Hardwicke, Hil. 11, it was agreed, that no Tithe is due of the Wood of a timber-tree, which has been once privileged from the payment of Tithe, although such Wood was sold to be used for firing. Walton v. Tryon, Mich. 25 Geo. 2. 5 Bac. Abr. See farther, Bros. Dif. pl. 14: 11 Rep. 4: Cro. El. 4: Godb. 175; 1 Roll. Abr. 640. pl. 3. Held also in the said case of Walton v. Tryon, that wherever a tree has been lopped before it was of the age of 20 years, all future loppings, although ever so old, are liable to pay Tithe. If a tree, which was once privileged from paying Tithe, is felled, the germs that spring from the root of such tree are also privileged. 1 Rep. 45, Lisbury's Cafe. But, in the case already cited, it was said by Hardwicke, Chancellor, that all germs which spring from the roots of trees that hath been felled, are tithable. Walton v. Tryon.

IV. Such Tithe as arise from hens or fowls which are fed with the fruits of the earth, are called mixed Tithe. 2 Inst. 629; 1 Roll. Abr. 645. Many things are, by the Ecclesiastical Law, liable to pay such Tithes, which by the Common Law are not. 2 Inst. 621; 4 Mod. 344.

The design under this Head is to shew, of what mixed Tithes are due by the Common Law.

The same general observations as to covenants, frauds, and exemption, apply here, as to the former kind of personal Tithes.

The Tithes of cloths, calves, lambs, kids, pigs, milk, cheese, agistment or pasturage, eggs, chickens, &c. are mixed Tithes. Shaw's Law of Tithes.

Tithes are in general due of the young of all beasts, except such as are fere nature. But none are due of young hounds, apes, or the like, because such beasts are kept only for pleasure. Bros. Disj. pl. 20. No Tithe is due of the young deer. For there are fere nature. 2 Inst. 631. And, for the same reason, none is due, but by custom, of young conies. 1 Roll. Abr. 635; C. pl. 7; Cro. Car. 339; 1 Feutr. 5.

The young of all birds and fowls, except such as are fere nature, are in the general liable to pay Tithes; unless the eggs of such birds or fowls have been paid for paid Tithes. 1 Roll. Abr. 642. pl. 6: 2 P. Wms. 463. But no Tithes are due either of the eggs or young of any birds or fowls which are kept only for pleasure.
Tithes V.

unites between spiritual persons; but in ordinary cases, between spiritual men and laymen, are only to compel the payment of them, when the right is not disputed, 2 Inst. 504, 489, 490. By the statute, or rather writ, of Circumjacentes egentes, it is declared, that the Court Christian shall not be prohibited from holding plea, "A rector eis a crimine superchinitor obiitibus e decemus dibitis et comprobatorius," So that if any dispute arise whether such Tithes be due and acknowledged, this cannot be determined in the Ecclesiastical Court, but before the King's Courts of the Common Law; as such question affects the temporal inheritance, and the determination must bind the real property. But where the right does not come into question, but only the fact, whether or no the Tithes allowed to be due are really substracted or withdrawn, this is a trespass personal injury, for which the remedy may properly be had in the Spiritual Court; viz. the recovery of the Tithes, or their equivalent. By 25 Eliz. 2 and 3 Eliz. 8, c. 13, it is enacted, that if any person shall carry off his predecesor Tithes, viz. of corn, hay, or the like, before the tenth part is duly set forth, or agreement is made with the proprietor, or shall willingly withdraw his Tithes of the same, or shall flay or hinder the proprietor of the Tithes, or his deputy, from viewing or carrying them away, such offender shall pay double the value of the Tithes, with costs, to be recovered before the Ecclesiastical Judge, according to the King's Ecclesiastical Laws. By a former clause of the same statute, the treble value of the Tithes, so substracted or withheld, may be sued for in the Temporal Courts; which is equivalent to the double value to be sued for in the Ecclesiastical: For one may sue for and recover in the Ecclesiastical Courts, the Tithes themselves, or a recompence for them, by the ancient Law; to which the suit for the double value is superadded by the statute: But as no suit lay in the Temporal Courts for the subraction of Tithes themselves, therefore the statute gave a treble forfeiture, if sued for there; in order to make the course of justice uniform, by giving the same reparations in one Court as in the other. 2 Inst. 250.

By 27 H. 8. c. 20, 34 H. 8, c. 7; upon complaint by the Ecclesiastical judge, of any contempt or misbehaviour by any defendant in any suit for Tithes, and Privy Council, or any Two Judges of the Peace, or, in case of disobedience to a definitive sentence, any two Judges of the Peace, may commit the party to prison, without bail or mainprice, till he enters into a recognizance, with sufficient sureties, to give due obedience to the process and sentence of the Court. However, it now seldom happens that Tithes are sued for at all in the Spiritual Court; for if the defendant pleads any custom, modus, composition, or other matter whereby the right of tithing is called in question, this takes it out of the jurisdiction of the Ecclesiastical Judges; for the Law will not suffer the existence of such a right to be decided by the sentence of any single, much less an Ecclesiastical Judge, without the verdict of a Jury. 3 Comm. c. 7.

The following statutes have also operated to abridge the power of the Ecclesiastical Court in this respect. By 27 & 8 W. 3. cap. 6. § 1, it is, for the more easy recovery of Small Tithes, where the same do not amount to above the yearly value of 40s. from any one person, enacted, "that if any person shall fail in paying the 40s. for 20 days after demand, the Parson may make complaint in writing to two Justices of the Peace, (neither being patron, nor interested,) who, after sumonning the party, are to hear and determine the complaint, give a reasonable allowance for the Tithes, and costs not exceeding 10s."

If the person complained against insists on any pretense, composition, modus, or otherwise, or other title, delivers the same in writing to the Justices, and gives to the party complaining sufficient security to pay costs at Law, if the title is not allowed, the Justices are not to give judgment. The Justices have power to give costs, not exceeding 10s. to the party prosecuted, if they find the complaint false and vexatious. The act not to extend to Tithes within the city of London, or in any other place where the same are settled by any act of Parliament. An appeal is given to the Sessions, and no proceedings or judgment, had by virtue of this act, to be removed or superceded, by any writ of certiorari, or other writ whatsoever, unless the title of such Tithes shall be in question."

By 7 & 8 W. 3. c. 34, § 4, where any Quaker shall refuse to pay, or compound for, his Great or Small Tithes, it shall be lawful for the two next Justices of the Peace of the same county, other than such Justice of the Peace as is patron of the church or chapel to which the Tithes belong, or any way interested, upon complaint, to convene before them such Quaker, and to examine upon oath the truth of the complaint, and to ascertain what is due from such Quaker, and by order under their hands and seals to direct the payment thereof, so as the sum ordered do not exceed 10s. and, upon refusal of the Quaker to pay, to levy the money. Any person aggrieved, may appeal to the next General Quarter Session.

No proceedings, or judgment, had by virtue of this act, shall be removed or superceded by any writ of certiorari, or other writ out of his Majesty's Courts at Westminster, or any other Court whatsoever, unless the title to such Tithes shall be in question."

The material point as to granting a certiorari is, whether the title to the Tithes is really in question. The general denial of a right to Tithes, by a Quaker, is not such a controverting the title, as shall enable him to have a certiorari. 2 Burr. 483.

By 1 Geo. 1. 1 Stat. 2. c. 6. § 2, the like remedy is given for the recovery of all Tithes and all other ecclesiastical dues from Quakers, as by 7 & 8 W. 3. c. 34, is given for Tithes to the value of 10s.

And such Justices of the Peace, upon complaint of any person, vicar, curate, farmer or proprietor of such Tithes, or other person who ought to have, receive, or collect, any such Tithes or dues, may proceed in the same manner as directed by the former act, touching Quakers.

The Tithes of Houses in London, which are regulated by 37 H. 8. c. 12, may be recovered in the Court of Exchequer. Bonnet v. Trogoff, 3 E. P. C.—Under 22 & 23 Geo. 2. c. 15, the Tithes of all the Parishes in London, injured by the great fire in 1666, are feated, to be levied by an equal rate; and, on non-payment, the Lord Mayor is to grant a warrant of dilrefs for the same; or, on his refusal, the Lord Chancellor, or two Barons of the Exchequer, may grant such warrant;
warrant; and all Courts, Ecclesiastical and Temporal, are 
equipped of their jurisdiction in this case, by this statute. — 
Tithes are a real charge on the houses, payable 
though they are empty, and leviable on the goods of 
the succeeding occupier; and appeal lies from the Lord 
Mayor to the Lord Chancellor. 3 Att. 539.

VI. Acorns, as they yearly increase, 
are liable to the payment of Tithes; but this is where they are gathered 
and fold, and reduced to a certain profit; not when 
they drop, and the hogs eat 
fore tithed. 2 Arsf. 57.

After-Math, or After Pasture, pays no Tithes, 
except by custom; being the remains of what was 
before tithed. 2 Idf. 652: 2 Danv. Abr. 589; title 
Dihans.

To Flogging of Cattle upon pannage land, which hath 
paid no other Tithes that year, pays Tithes for 
The cattle. And if a man breeds or buys barren unprofitable Cattle, 
and sells them, he shall pay for the 
Agreement; but if he depastures his land with his own 
Saddle Horses, he shall pay no Tithes. If ground is 
cut up with unprofitable Cattle of a man’s own, or others, a tenth part of the 
yearly value of the rent of the 
land, if the sum of 2 s. per pound, is payable 
by the owner of the land, or his tenant; though the 
twentieth part is usually accepted. 1 Roll. Abr. 645: Hard. 184.

See ante III. — Alder Trees pay Tithes, notwithstanding 
they are above 20 years growth, not being timber. 
— Ash is timber, and therefore, if these trees are above 
twenty years’ growth, they are Tithes free. — Aspen or 
Aurum Trees are exempted, if beyond that growth, in 
places where they are used for timber. 2 Cro. 199: 
2 Idf. 643.

Bark of Trees is not tithable, if the trees whereon 
produced were timber. 11 Rep. 49.—Barren Land, 
which is fo of its own nature, pays no Tithes; where 
land is barren, and not manurable without some extraordinary charge, in respect of such charge, and for the 
advancement of husbandry, such land being converted 
to tillage, shall, for the first seven years after the 
Improvement, be discharged from Tithes; by Stat. 3 
Ed. 5: c. 15. But the barren Land, during the seven 
years of Improvement, shall pay such Small Tithes as 
have been accustomably paid before; and afterwards 
to pay the full Tithes according to the improvement. 
And if Land is over-run with bushes, or become unprofitable 
by bad husbandry, it cannot properly be called 
barren Land; for if it be grubbed, or ploughed and 
sowed, it immediately pays Tithes. 2 Idf. 656: Cro. 
Eeff. 475.—Birch Trees, where timber is scarce, 
and these trees are used for building, if above 20 years’ 
growth to be timber, are privileged from Tithes, by 
Stat. 4 Ed. 3. c. 3; though this tree is not naturally 
timber, for it is necessity makes it so. 2 Danv. Abr. 589.

Bees are tithable for their Honey and Wax, by the 
tenth measure and tenth pound. It has been a question, 
whether the tenth Swarm can be demanded for Tithes of 
Bees, because Bees are fera nature; but when the 
Bees are gathered into the hives, they are then under 
custody, and may pay Tithes by the Hive or Swarm; 
but the Tithes is generally paid in the 
tenth part of the 
Honny or Wax. 1 Roll. Abr. 651: 3 Cro. 404, 559.

Birch Wood is tithable, though of above 20 years’ 
growth. 2 Idf. 643.—Branches not Tithes, for they 
are made of parcel of the freehold, and are of the sub- 
stance of the earth, not an annual increafe. 1 Cro. 1.

Broom shall pay Tithes; but it may be charged by 
custom, if burnt in the owner’s house, or kept for 
husbandry. 2 Danv. Abr. 597.

Calves are tithable, and the tenth Calf is due to 
the Parson, when sold; and he is not obliged to take 
it before; but if in one year a person hath not the num- 
ber of ten Calves, the Parson is not entitled to Tithes in- 
kind for that year, without a special custom for it; 
though he may take it in the next year, throwing both 
tables together; and it is a good custom to pay one Calf 
in seven, where there hath been no more in one year; 
and where a man sells a Calf to pay the tenth of the 
value, or for the Parson to have the right shoulder, 1 

Cattle fold pay Tithes; but not Cattle kept for 
the plough or pail, which shall pay no Tithes for their 
pature, by reason the Parson hath the benefit of the 
labour of Plough-Cattle in tilling the ground, by the 
Tithes of Corn, and Tithes of Milk for those kept for 
the pail; yet if such Cattle bought are fold before used; 
or if, being past their labour, the Cows are barren, and 
afterwards fattet in order to sell, Tithes shall be paid 
for them; though the owner kill and spend the Cattle 
in his own house, no Tithes is due for them, being for 
his provision, to support him in his labour about other 
affairs for which the Parson hath Tithes. Cattle feeding 
on large commons, where the bounds of the parishes are 
not certainly known, shall pay Tithes to the 
Parson of the parish where the owner lives; and if fed in several 
parishes, and they continue above a month in each, 
Tithes shall be paid to the two Parsons proportionably. 
1 Roll. Abr. 645, 646, 647: Hard. 35: Stat. 2 & 3 
Ed. 6. c. 13. 53.—Chalk and Chalk-Pits are not tithable; nor is Clay or Coal, as they are part of the 
freehold, and not annual, to pay Tithes. 2 Idf. 651.

—Cheese pays Tithes by custom, where Tithes is 
not paid for the Milk; but if the Milk pays a Tithes, the 
Cheese pays none; and it may be a good custom to 
pay the tenth Cheese made in such a month, for all 
Tithes Milk in that year. 1 Roll. Abr. 651. See Milk.

—Chickens are not tithable, if Tithes is paid for the 
Eggs. 1 Roll. Abr. 642.—Calves pay Tithes in the 
same manner as Calves. Ibid.—Conies are tithable 
only by custom, for those that are fold, not for such as 
are spent in the house. 2 Danv. Abr. 553.—Corn pays 
a preial Tithes; it is tithed by the tenth cock, heap, or 
head; which, if the owner do not set out, he may be 
used in an action upon the Stat. 2 & 3 Ed. 6. c. 13.
And if the Parson is not to have his land usually sown, 
the Parson may bring his action against him. When 
Tithes of Corn is set forth, the Law gives the Parson a 
reasonable time to carry it away; and if he suffer the 
same to lie too long on the land, to the prejudice of the owner 
thereof, he may be liable to an action; but the Parson 
may not set out the Tithes himself, or take them 
away without leave. 1 Roll. Abr. 654: 1 Sid. 283: 
2 Vent. 48: Leg. 70.

Deer are not tithable, for they are fera nature; 
though in parks, &c., they pay Tithes by custom. 2 Idf. 
651.—Doves kept in a dove-houfe, if they are not 
spent in the owner’s house, are tithable. 1 Vent. 5.
TITHES VI.

Eggs pay Tithes when Tithes are not paid for the young. 1 Roll. Abr. 642. - Elm Trees, being timber, are discharged from the payment of Tithes, but not if under twenty years' growth. 2 Roll. 643.

Fallow Ground is not tithable for the pasture in that year in which it lies fallow, unless it be set forth as a fallow in ponds and rivers enclosed, ought to be set forth as a tithable field, and renders the land more fertile by lying fresh. 1 Roll. Abr. 642. - Parks being drained and made manurable, or converted into pasture, are subject to the payment of Tithes. 1 Roll. Rep. 354. - Fish taken in the sea, or common rivers, are tithable only by custom, and the Tithe is to be paid in money, and not the tenth fish; but fish in ponds and rivers inclosed, ought to be set forth as a Tithe in kind. 2 Dows. Abr. 683, 684. - Flax, every acre of flax or hemp (own payment of $2 per lb.).

Fowls, as hens, geese, ducks, are to pay Tithes, if a forester shall be set out and paid, after being made into hay, or sold. 2 Roll. Abr. 655: 3 C. 94. - Fowls, as hens, geese, ducks, are to pay Tithes, either in eggs or the young, according to custom, but not in both; so of Turkey's it is now resolved, that Tithes are due of their eggs or young. 2 P. Wm. 463.

Fruits, apples, pears, plums, cherries, &c. pay Tithes in kind when gathered, and ought to be set out according to the statute. 2 Inf. 621. - Fruit Trees cut down and sold, are not tithable, if they have paid Tithe fruit that year before cut. Ibid. 622. - Fowlers, if sold, Tithe, not if used for fuel in the house, or to make pens for sheep, &c. Wood's Inf. 166.

Gardens are tithable as lands, and therefore Tithes in kind are due for all herbs, plants, and seeds sown in them; but money is generally paid by custom or agreement. - Grass mown is tithable by payment of the tenth, or according to custom; but for grass cut in swaths for the fattening of plough cattle only, not made into hay, no Tithe is to be paid. Grass of corn, &c. when sold standing, the buyer shall pay the Tithe; and if sold after cut and severed, the seller must pay it. The parson is not obliged to take Tithe of grass the day it is cut, but he has time long enough to make it into hay, Strange 245; 1 Roll. Abr. 644, 645. See poll. Hay.

Hazels, Holly, and Maple Trees, &c. are regularly tithable, although of twenty years' growth. 2 Dow's Abr. 589. - Hay pays a preial Tithe; the tenth cock is to be set out and paid, after made into hay, by the custom of most places; and by custom generally, but not of common right, the parishioners shall make the grass cocks into hay for the parson's Tithe; but if they are not obliged to make the Tithe into hay, they may leave it in cocks, and the parson must make it, for which purpose he may come on the ground, &c. A prescription to measure cut and pay the tenth acre, or part of grass standing, in lieu of all Tithe hay, may be good: And if meadow ground is so rich, that there are two crops of hay in a year, the parson, by special custom, may have Tithe of both. 1 Roll. Abr. 643, 647, 950. - Hedgerows are not tithable, if only large enough for turning the plough, but if larger, Tithe may be, and generally is, payable. 2 Inf. 653.

Hemp; see Flax. - Harvest of ground is tithable for barren cattle kept for sale, which yield no profit to the parson. Wood's Inf. 157. - Honey pays a Tithe, see Bees. - Hops are tithable, and the tenth part may be set out after they are picked. There are several ways of tithing Hops, viz. by the hills, pole, or pound; in some places they set forth the tenth pole for Tithes; but Lord Chief Justice Rolle tells us, they ought not to be tithed before dried. 1 Roll. Abr. 644. It is now settled, on appeal to the House of Lords, that Hops ought to be picked and gathered from the lines before they are tithable. Then they may be taken in baskets, before being dried, and every tenth basket set out for the Tithes. Waite v. Tyers, Br. P. C. - Horses kept to fall, and afterwards sold, Tithes shall be paid for their pasture; though not where horses are kept for work and labour. Huts. 77. - Horses for dwelling are not properly tithable. A modus may be paid for horses in lieu of Tithes of the land upon which they are built; and a great many cities and boroughs have a custom to pay a modus for their horses; as it may be reasonably supposed that it was usual to pay so much for the land, before the horses were erected on it. 11 Rep. 16; 2 Inf. 659. See title London (Tithes) and ante V.

Kids pay a Tithe as calves, the tenth is due to the parson. Wood 167. - Lambs are tithable in like manner as calves; but if they are shorn in one parish, and do not shorn in thirty days, no Tithe is due to the parson of that place. If there be a custom that the parishioners, having lambs or under, shall pay so much for every lamb, and if he have above that number then to pay the seventh, it is good. 3 C. 403. - Lead may pay Tithe by custom, as it does in some counties; but it doth not without it. 2 Inf. 651. - By custom only, Lime and Lime-Kilns are tithable. 1 Roll. Abr. 642.

Madder is now tithable in kind: It was liable, for 28 years only, to a modus of 5s. but the statutes for that purpose are now expired. Stat. 1 Geo. 2. c. 123, Geo. 3. c. 18. - Most of oak and beech pays Tithes as under Acrums. - Milk is tithable when no Tithes are paid for cheese, all the year round, except custom over rules; and it is payable by every tenth meal, not tenth quart or part of every meal; and it was formerly held, that it was to be brought to the house of the parson, &c. in which particular this Tithes differs from all others, which must be fetched by the receiver. But this is only where there is a special custom; and it seems now decided that the Tithe of milk is by fetching out every tenth morning and evening's meal, in clean vessels, belonging to the owner of the milk, and leaving the same therein till the vessel is again wanted by the owner. And if not fetched away by the parson, prior to that time, the owner is at liberty to throw it on the ground; and in the intermediate time, the owner is not answerable for any accident that may happen to it. Dr. Broughton v. Lawler, Br. P. C. In some places they pay Tithes for cheese for milk, and in others some small rate, according to custom. C. Eliz. 609; 2 Dow's Abr. 556. MILLS, as there are several sorts of them, the Tithes are different: the Tithes of corn-mills driven by wind or water, have been paid in kind, every tenth tallow of corn to the parson of the parish wherein the mills are standing: But ancient corn-mills are Tithe-free, being supposed that they are very ancient, and never paid Tithes, &c. And it is questioned whether.
Tithes VI.

whether Tithe is due for any corn-mills, unless by custom, because the corn hath before paid Tithe: and if it be not, then a personal Tithe WHERE DUE. The Tithe of falling-mills, paper-mills, powder-mills, \\,* are personal, charged in respect to the labour of men, by custom only; and these are regarded more as engines of several trades than as mills. 1 Roll. Abr. 656; 2 Inst. 621. It is now settled that Tithe of all mills are personal Tithes; and only a tenth part of the clear profits, deducting all charges and expenses, is payable as Tithe, Nunda v. Chamberlain, Bro. P. C. and see 2 P. Wms. 463. - MINS: pay no Tithe but by custom, being of the subsidence of the earth, and not annually increasing. 2 Inst. 651.

NURSERY OF TREES shall pay Tithe, if the owner dig them up and makes profit of them by selling. 2 Danv. Abr. 585: 1 Cr. 526: 2 Johns. 416: Godb. 431: Hardr. 380.

OAK TREES are privileged as timber from the payment of Tithe by the statute of Silica Gordius, 45 Edw. 3. c. 3; if of or over twenty years' growth; and if Oaks are under that age, it is the same when they are apt for timber. Mar. 541. See ante III.-Offerings, &c. are in the nature of personal Tithes. 2 Inst. 659, 661. See tithe Offerings; Oblations. - ORCHARDS pay Tithes both for the fruit they produce, and the grafts or grain, if any be fow or cut therein. 2 Inst. 651.

PARLS are titheable by custom, for the deer and the herbage; and when detached and converted into Tillage they shall pay Tithes in kind: The Tithes of Parks may be in part certain, and part casual; and 25 or a year, and a shoulder of every third deer, hath been paid as Tithe for a Park. 1 Roll. Rep. 176: Hob. 37, 40.-PARTRIDGE and PRELASSANTS, &c. as they are from nature, yield no Tithes of eggs or young. 1 Roll. Abr. 656.

-PEASE, if gathered for sale, or to feed hogs, pay Tithes: but not green Pease spent in the house. 1 Roll. Abr. 647. Eating Pease, found in fields, and sold green for sale, are a small Tithe. Sims v. Bennett and another. Bro. P. C. PIGEONS ought to pay Tithes when sold, and this holds good if they lodge in holes about the house, as well as in a dove-house and by custom, if spent in the house, they may be titheable, though not of common right. 2 Danv. Abr. 583, 597. - PIGS are titheable, as calves. Ibid. - POLLARD TREES, such as are usually looped, and distinguisht from timber-trees, pay Tithes. Blood. 470.

QUARRIES of stone, &c. are not subject to pay Tithes; because they are part of the inheritance, and Tithes ought to be collateral to the land, and different from it. 1 Roll. 644.

RABBITS; See Canes. - RAKINGS OF CORN are not titheable, for they are left for the poor, and are properly the scatterings of the corn whereof the Tithes have been paid, left after the cows set out are taken away. Cro. Eliz. 656. See ante III. (Corn).

SAFFRON pays a predial and small Tithe. 1 Cr. 496. - SALT is not titheable, but by custom only. 1 Bank. 10.

- SHEEP, a Tithe is paid for, of lambs and wool, and therefore they pay no Tithe for their feeding. But see ante III. Agistment. If Sheep are in the parish all the year, they are to pay Tithe wool to the Parson; but if removed from one parish to another, (without fraud,) the Parson of each parish have Tithe pro rata, where they remain thirty days in a parish; and if they are fed in one parish, and brought into another to be shorn, the fact of titheing is to be observed. 1 Roll. Abr. 542, 647: 3 Cr. 257. It seems now that the rule is, that Tithe of the wool shall be paid where the Sheep are shorn; and Agistment Tithe in other parishes where they have been depastured. Shaw's Law of Tithe. - STUMBLE pays no Tithe under aftermath. 2 Inst. 652.

TARES, vetches, &c. are titheable; but if they are cut down green, and given to the cattle of the plough, where there is not a sufficient suffauce in the parish, no Tithe shall be paid for them. 1 Cr. 159. - TARES are not yearly increase, and not titheable. 2 Inst. 651. - TIMBER TREES, such as oaks, ashes, and elms, and in some places beech, &c. above the age of twenty years, were discharged of Tithe by the Common Law, before the statute 45 Ed. 3. c. 37 and the reason of it is, because such trees are employed to build houes, and houses when built are not only fixed to, but part of the freehold; loppings of TIMBER TREES above twenty years' growth, pay no Tithe, for the branch is privileged as well as the body of the tree; and the roots of such trees are exempted as parcel of the inheritance. Trees cut for plough-bone, cart-bone, &c. shall not pay Tithe, although they are not Timber; but all trees not fit for Timber, and not put to these uses, pay Tithe. 1 Roll. Abr. 650: Cro. Eliz. 47, 489. See ante III.-TREES used for fuel are part of the fuel, and Tithe-free. 2 Inst. 671. - TURFES, are reckoned among the small predial Tithe; and the Tithes of them shall be paid as often as they are law, though twice or more on the same land and in the same year. So if eaten off the land by barren cattle. Bank. 10. See III. Agistment.

UNDERWOOD is titheable, though the Tithe is not of annual payment; and is set out while standing, by the tenth acre, pole, or perch; or when cut down, by tenth faggot or billiet, as custom directs; and if he that fells the wood doth not set out the Tithe, he is liable to the treble damages by 6 and 3 Ed 6. c. 13. But if the Underwood is used for hewing in a house of hamburdy, or to burn brick to repair the house, or for hedging and fencing the lands in the same parish, it may be discharged from Tithe. 2 Inst. 642, 643, 652: Hob. 250: 2 Danv. Abr. 597.

WARRENS where titheable, see Common. - WASTE GROUND, whereon cattle feed, is liable to the payment of Tithe. 2 Danv. Abr. - WOOD growing in the nature of an herb is a predial and small Tithe. Huist. 77: Cro. Cor. 28: Wood is generally esteemed to be a great Tithe. If WOOD woods have likewise timber-trees growing on them, and confit for the most part of such trees, the timber-trees shall privilege the other Wood; but if the WOOD is the greatest part, then it must pay Tithe for the whole. 13 Rep. 11. If Wood be cut to make pole-places, where the Parson hath Tithe hopes, no Tithe shall be paid for it. Hughs's Abr. 689. See ante III.

- WOOS is a mixed small Tithe, paid when clipped; one fleece in ten, or in some places one in seven; is given to the Parson. If there is under ten pounds of Wool at the shearing, a reasonable consideration shall be paid, because the Tithes are due of common right; and if less than ten fessces, they shall be divided into ten parts, or an allowance be otherwise made. All sheep killed, and sheep which die, pay Tithe Wool; and neck Wool cut off for the benefit of the Wool, but not if it is to preserve
TITHES VII.

VII. LANDS, and their occupiers, may be exempted or discharged from the payment of Tithes, either in part or totally, first, by a real composition; or, secondly, by custom or prescription.

First. A real composition is when an agreement is made between the owner of the lands, and the Patron or vicar, with the consent of the Ordinary and the Patron, that such lands shall for the future be discharged from payment of Tithes, by reason of some land or other real recompense given to the Patron, in lieu and satisfaction thereof. 4 Inst. 490: Reform. 38: 13 Rep. 40.

This was permitted by Law, because it was supposed that the Clergy would be no losers by such composition; since the consent of the Ordinary, whose duty it is to take care of the church in general, and of the Patron, whose interest it is to protect that particular church, were both made necessary to render the composition effectual: and hence have arisen all such compositions as exist at this day by force of the Common Law. But, experience showing that even this caution was ineffectual, and the pledges of the Church being, by this and other means, every day diminished, the disabling statute, 13 Eliz. c. 10, was passed; which prevents, among other spiritual persons, all patrons and vicars from making any conveyances of the estates of their churches, other than for the Tithe of his own estate, Incumbent, though confirmed by the name of a person, all parsons and vicars from making any contract or beyond an agreement for a specific estate, or for one of twenty-one years, though made by consent of the Ordinary and the patron, is tithable.

Secondly, A discharge by custom or prescription, is where, time out of mind, such persons or such lands have been, either partially or totally, discharged from the payment of Tithes. And this immemorial usage is binding upon all parties; as it is in its nature an evidence of universal consent and acquiescence, and with reason supposes a real composition to have been formerly made. This custom or prescription is either de modo decimandi, or de non decimandi.

A Modus decimandi, commonly called by the simple name of a Modus only, is where there is by custom a particular manner of tithing allowed, different from the general law of taking Tithes in kind, which are the actual tenth part of the annual increase. This is sometimes a pecuniary compensation, as two-pence an acre for the Tithe of land; sometimes it is a compensation in work and labour, as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner’s making it for him; sometimes, in lieu of a large quantity of crude or imperfect Tithes, the parson shall have a less quantity, when arrived to greater maturity, as a couple of fowls in lieu of Tithe eggs; and the like. Any means, in short, whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a modus decimandi, or special manner of tithing.

To make a good and sufficient Modus, the following rules must be observed. 1. It must be certain and invariable. For payment of different sums will prove it to be no modus, that is, no original real composition; because that must have been one and the same, from its first original to the present time. 1 Keb. 607. 2. The thing given, in lieu of Tithes, must be beneficial to the parson, and not for the emolument of third persons only: thus a modus, to repair the church in lieu of Tithes, is not good, because that is an advantage to the parish only; but to repair the chanels is a good modus, for that is an advantage to the parson. 1 Roll. Abr. 640.

3. It must be something different from the thing composed for; one load of hay, in lieu of all Tithes, is, in the eye of the law, no good modus; for no parson would back his make a composition to receive less than his due in the same species of Tithe; and therefore the Law will not suppose it possible for such composition to have existed. 1 Lec. 179. 4. One cannot be discharged from payment of one species of Tithes, by paying a modus for another. Thus a modus of 5d. for every milk cow will discharge the Tithe of milk kine, but not of barren cattle; for Tithes, is of common right, due for both; and therefore a modus for one, shall never be a discharge for the other. 4 War. 466: Selk. 567. 5. The recompense must be in its nature as durable as the Tithes discharged by it; that is, an inheritance certain: and therefore a modus that every inhabitant of a house shall pay 2d. a year, in lieu of the owner’s Tithes, is no good modus, for possibly the house may not be inhabited, and then the recompense will be lost. 1 P. Wms. 402. 6. The modus must not be too large, which is called a rank modus; as if the real value of the Tithes be 60l. per annum, and a modus is suggested of 40l. this modus will not be established; though one of 40s. might have been valid. 11 Mod. 60. Indeed, properly speaking, the doctrine of rankness in a modus, is a mere rule of evidence, drawn from the improbability of the fact, and not a rule of Law. Pyk e. Dow. Hist. 19 Geo. 3. C. B. For, in these cases of prescriptive or customary modus’s, it is supposed that an original real composition was antiently made; which being lost by length of time, the immemorial usage is admitted as evidence that it once did exist, and that from thence such usage was derived. Now time of memory hath been long ago ascertained by the Law to commence from the beginning of the reign of Richard the First; and any custom may be destroyed by evidence of its non-existence in any part of the long period from that time to the present; whereas, as this real composition is supposed to have been
TITHES.

an equitable contrast, or the full value of the Tithes, at the time of making it, if the modus set up is so rank and large, that it beyond dispute exceeds the value of the Tithes in the time of Richard the First, this modus is (in point of evidence) valid & is, and destroys itself. For, as it would be destroyed by any direct evidence to prove its non-existence at any time since, so also it is destroyed by carrying in itself this internal evidence of a much later original.

To constitute a good Modus, it seems necessary that it should be such as would have been a certain, fair, and reasonable equivalent or composition for the Tithes in kind, before the year 1189; and therefore no modus for hops, turkeys, or other things introduced into England since that time, can be good. 307. The question of rankkens, or rather modus or no modus, is a question of fact which Courts of Equity will fend to a Jury; unless the grossness of the modus is so obvious as to preclude the necessity of it. 2 Bro. C. K. 163. 1 Black. Rep. 420.

A Prescrip.ion de non decimando is a claim to be entirely discharged of Tithes, and to pay no compensation in lieu of them. Thus the King by his prerogative is wholly discharged of Tithes, and to pay no compensation. 179.

Jury; But there (personal privileges (not arising from or being annexed to the land) are personally confined to both the King and the Clergy; for their tenant or lessee shall pay Tithes, though in their own occupation their lands are not generally tithable. And, generally speaking, it is an established rule, that in lay hands, modus de non decimando non vallet. But it seems that the King's tenant at will shall not pay Tithes.

Spiritual persons or corporations, as monasteries, abbeys, bishops, and the like, were always capable of having their lands totally discharged of Tithes, by various ways; Hob. 309; Cro. Jac. 308: As. 1. By real composition; 2. By the Pope's bull of exemption; 3. By unity of possession; as when the rector of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of Tithes by this unity of possession; 4. By prescription; having never been liable to Tithes, by being always in spiritual hands; 5. By virtue of their order; as the Knights Templars, Cistercians, and others, whose lands were privileged by the Pope with a discharge of Tithes. 2 Rep. 44; 5 Edw. Titb. c. 13. §2. Though, upon the dissolution of the greater abbeys by Henry VIII., most of these exemptions from Tithes would have fallen with them, and the lands become tithable again; had they not been supported and upheld by the Stat. 31 Eliz. 8. c. 13: which enacted, that all persons who should come to the possession of the lands of any abbey then dissolved, should hold them free and discharged of Tithes, in as large and ample a manner as the abbeys themselves formerly held them. This provision is peculiar to this statute, and therefore all the lands belonging to the former monasteries, dissolved by Stat. 27 H. 8. c. 28, are now liable to pay Tithe. And from this original have sprung all the lands, which, being in lay hands, do at present claim to be Tithe-free; for if a man can shew his lands to have been such abbey lands, and also immemorially discharged of Tithes by any of the means before-mentioned, this is now a good prescription de non decimando. But he must shew both these requisites: for abbey lands, without a special ground of discharge, are not discharged of course; neither will any prescription de non decimando avail in total discharge of Tithes, unless it relates to such abbey lands, and where such has been a certain, fair, and reasonable equivalent or composition, in point of evidence. For more learning on this subject, see 5 Bar. Abr. Tith. 10. Abr. title Dismiss; and Shaw's Law of Tithes.

TITHING. Tithings, from the Sax. Tostinga, Div.疹rila.] Was, in its first appointment, the number or company of ten men with their families, held together in a society, all being bound for the peaceable behaviour of each other: and of these companies there was one chief person who was called Teothun-man, at this day Tithing-man; but the old discipline of Tithings is long since left off. In the Saxen times, for the better conservation of the peace, and more easy administration of justice, every hundred was divided into ten districts or tithings; and, within every Tithing, the Tithing-men were to examine and determine all lefeer causes between villagers and neighbours; but to refer greater matters to the then superior Courts, which had a jurisdiction over the whole Hundred. 1 Parch. Antq. 513. The subdivision of Hundreds into Tithings, seems to be most peculiarly the invention of King Alfred. See 1 Comm. Introd.

TITHING-MEN, Are now a kind of petty Constables, elected by parishes, and sworn in their offices in the Court-leet, and sometimes by Justices of Peace, &c. There is frequently a Tithing-man in the same town with a Constable, who is as it were a deputy to execute the office in the Constable's absence; but there are some things which a Constable has power to do, that Tithing-men and Headboroughs cannot intermeddle with. 3 Dall. 5.

When there is no Constable of a parish, the office and authority of a Tithing-man seems to be the same under another name. Stat. 13 & 14 Car. 2. c. 12. See title Constable.

TITHING-PENNY; See Tiding-penny.

TITHE, Tithe.] Is when a man hath lawful cause of entry into lands whereby another is feigned; and it signifies also the means whereby a man comes to lands and tenements, as by fequestment, fine, lost will and testament, &c. The word Tithe includeith a right, but is the more general word: Every right is a Tithe, though every Tithe is not such a right for which an action lies; for that tithe is, ex aere posito, a genus praebendae juris, and the means of holding the lands. Co. Lit. 435. Blackstone defines it to be "The means whereby the owner of lands has the just possession of his property." 2 Comm. c. 13.

There are several flags or degrees requisite to form a complete Title to Lands and Tenements: As, 1st, the lowest, and most imperfect degree of Title consists in the mere naked Possession, or actual Occupation of the Estate, without any apparent right, or any shadow or pretence of right, to hold and continue such possession; which naked possession, by length of time, and negligence of him who hath the right, may by degrees ripen into a perfect and indefeasible Title; and, at all events, without actual possession, no Title can be completely good. 2d. The next step to a good and perfect Title is a Right of Possession; which is either actual or apparent; and which may reside in one man, while the actual possession...
TITLE.

Possession is in another. This actual possession may be recovered by him who has the right of possession, if held for within a competent time; otherwise he will have nothing left in him, but, idly, The mere Right of Property, without even Possession, or the Right of Possession.

Thus, if a diffeiior turns me out of Possession of my lands, he thereby gains a mere naked Possession, and I still retain the Right of Possession and the Right of Property. If the diffeiior dies, and the lands descend to his son, the son gains an apparent right of Possession, but I still retain the actual right, both of Possession and Property. If I acquiesce for 30 years, without bringing any action to recover the Possession of the lands, the son gains the actual Right of Possession, and I retain nothing but the mere right of Property; and even this right of Property will fail, or at least be without a remedy, unless I pursue it within the space of 60 years. So also if the father be Tenant in Tail, and alienates the Estate in Tail to a stranger in Fee, the alienee thereby gains the Right of Possession, and the son hath only the mere Right, or Right of Property. And hence it will follow, that one man may have the Possession, another the Right of Possession, and a third the Right of Property. For if Tenant in Tail enfees A. in Fee-fimple, and dies; and B. acquires A.; then B. will have the Possession, A. the Right of Possession, and the Issue in Tail the Right of Property. A. may recover the Possession against B., and afterwards the Issue in Tail may evict A., and unite in himself the Possession, the Right of Possession, and also the Right of Property; in which union confunds a complete Title to lands, tenements, and hereditaments; for it is an ancient maxim of the Law, that no Title is completely good, unless the Right of Possession be joined with the Right of Property; which Right is then denominated a double Right, jus duplicatum, or duo jure. Co. Litt. 1. 2. c. 27: 1 Inst. 268; 4 Bla. 1. 5. 7. 2. Ed. 8. and when, to this double Right, the actual Possession is also united; when there is, according to the expression of Fleta, (l. 3. c. 25. § 5. juris ei jus solum jus commune, and, then, and then only, is the Title completely legal. See 2 Comm. c. 13.

A Title is generally applied to signify the Right to Land and Real Effects; as Property is to signify that to mere Personal Estate. See title Property; and further, this Dictionary, tittes Estate; Limitation of Allsions; Diffiland; Ejectia, &c.

Title to Lands, Tenements, and Hereditaments, is said to accrue either by Defcend or Purchase. Purchase, in this sense, includes every mode of acquiring Lands, except by Defeat. See this Dict. title Purchase.

As to Title by Defcend, see this Dict. under that Title. Title by Purchase may be either by Ejectia; Occupancy; Procuration; Forfeiture; or Alienation; which latter may be either by Deed, Matter of Record, Special Captian, or Devise.

Property in, or Title to, Things Personal, may arise either by Occupancy; Prerogative; and Forfeiture; by Captian; by Succession; Marriage; Judgment; Gift; Grant; Contract; Bankruptcy; Will; or Administration. See the several Tides in this Dictionary; as also Title Executor, and other apposite Titles; and a Comm. per int.

A man may plead in trespass, &c. without particularly setting forth his Title, where his justification is collateral to the Title of the land; so if damages are to be recovered, and the Title of the land is not in question; and in actions on real contracts, where the plaintiff shows enough to entitle him to the action, &c. 2 Mod. 70: 1 Roll. Rep. 13: Cro. Car. 571: 3 Nisi. Abr. 325. But in trespass for cutting corn on lands, the party must set forth the Title which he hath to the corn, or on demur it will be judged ill; for the showing that he is possessed thereof, is not sufficient without a Title, because the property shall be intended to be in the owner of the soil. 2 Saund. 401: 3 Salk. 361. See title Trespass.

When a person will recover any thing from another, he must generally make out and prove a better Title than the other hath, or it will not be enough to destroy his Title, &c. Hub. 105. It is not allowed for the party to forfake his own Title, and fly upon the other's; for he must recover by his own strength, not the other's weakness. Ibid. 104. If by the record it appears that the plaintiff in the cause hath no Title, he shall not have judgment. Lawm. 1631. The Law will not permit Tides and things in entry, &c. to be granted over; and the buying or selling any pretended rights, or Titles, to lands, is prohibited by statute as Maintenance. See that title, and further, 20 Vin. Abr. 275—298.

TITLE OF ACTS OF PARLIAMENT; See title Parliament VII.

TITLES, pretended, Buying or selling. See titles Champerty; Maintenance.

TITLE TO THE CROWN; See title King I.

TITLES OF CLERGYMEN, Signify some certain place where they may exercise their functions. A Title, in this sense, is the church to which a priest was ordained there constantly to reside: And there are many reasons why a church is called Titulus; one is because in former days the name of the Saint to whom the church is dedicated was engraved on the porch, as a sign that the Saint had a title to that church; from whence the church itself was afterwards denominated titulus. Concil. London, Anno 1025. Ancienly a Title of Clergy was no more than entering their names in the Bishop's roll, and then they had not only authority to assist in the ministerial function, but had a right to the share of the common fock or treasury of the church; but since, a Title is an assurance of being preferred to some ecclesiastical benefits. See this Dictionary, titles Curate; Parson.

TITLE OF ENTRY, Is when one feales of land in fee, makes a feoffment thereof on condition, and the condition is broken; after which the feffer hath Title to enter into the land, and may do so in his pleasure, and by his Entry the freehold shall be said to be in him presently. And it is called Title of Entry, because he cannot have a Writ of Right against his feoffee upon condition, for his right was out of him by the feoffment, which cannot be reduced into Entry; and the Entry must be for the breach of the condition. Cowel. See title Entry.

TITI'NYLKS, Tale bearers. Letter Ser. State, 28 Hr. 8. to James V. King of Scotland.

TOALIA; A towel. There is a Tenure of Lands by the service of waiting with a Towel at the King's Coronation. Inq. Ann. 12, 13 King Joh. See title Surjancy.

TOBACCO, Is not to be planted in England, on pain of forfeiting 40s. for every rod of ground thus planted; but this shall not extend to hinder the planting of Tobacco in physic gardens. Stat. 12 Car. 2. c. 34. Judg. etc.
tices of Peace have power to issue warrants to constables, to search after and examine whether any Tobacco be torn up or planted, and to destroy the same; which they are to do under penalty, &c. Stat. 22 & 23 Car. 2. c. 26, continued by Stat. 5 Geo. 1. c. 11. The importation and exportation of Tobacco is liable to the regulations of the Navigation Acts. See that tide. A duty is payable thereon on importation, under the management of the Commissioners of Customs and Excise; and the manufacture is subject to the control of the Commissioners and Officers of Excise; every manufacturer taking out a licence; the licence being charged according to the quantity manufactured, from 20,000 lb. weight to 150,000, at from 2/. to 20/. Dealers also take out licences. Various provisions, by many statutes, are made to enforce the above, and other regulations, to avoid adulteration in the manufacture, by mixing walnut tree leaves, or other leaves, with Tobacco. Under Stat. 1 Geo. 1. c. 46, this incurred a penalty of 5/. per lb; but under Stat. 29 Geo. 3. c. 58, § 34, the goods are forfeited, and a penalty of 100l. is also imposed. By Stat. 19 Geo. 3. c. 35, no such of former acts as prohibits the growth of Tobacco in Ireland is repealed, but Tobacco raised there is to be exported thence to England only.

**TOD OF WOOLS.** Twenty-eight pounds, or two scores; mentioned in Act 12 Car. 2. c. 31.

**TOFT, Tustum.** A meallage; or rather a place or piece of ground where an house formerly stood, but is decayed or casually burnt, and not re-edified. It is a word much used in legal papers, wherein we often read toftum and crosfam, sec. Walf. Symb. part. 2.

**TOFTMAN, Toftuamur.** The owner or possessor of a Toft. Reg. Priorat. Lecw. pag. 18.

**TOILE, Fr. i.e. Tela.** A net to encompass or take deer, which is forbidden to be used unlawfully in parks, on pain of 20l. for every deer taken therewith. 3 & 4 P. & M. c. 10. But see title Deer.

**TOKENS, FALSE; See title Cheats.**

**TOLERATION ACT.** The Stat. 1 W. & M. 2. c. 18; as to which, see this Dict. titles Dissenter, Papists. Toll, or To Toll, from Lat. tollere. To bar, defeat, or take away; as to toll the entry, i.e. to deny or take away the right of entry. Stal. & Hen. 6. c. 9. See title Entry.

**TOLL, Talæmatum, vel Theodolion.** A Saxon word, signifying properly a payment in towns, markets, and fairs, for goods and cattle bought and sold. It is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the same. 2 Inst. 220.

The word is used for a liberty as well to take, as to be free from Toll; of which freedom from Toll the City of Coventry boasts an ancient charter granted by Leofric Earl of the Mercians, in the time of King Edward the Confessor, who, at the importunity of Godwin, his virtuous lady, granted this freedom to that City.

By the ancient law of this land, the buyers of corn or cattle in fairs or markets ought to pay Toll to the Lord of the market, in testimony of the contract there lawfully made; for Toll was first invented that contracts in markets should be openly made before witnesses; and privy contracts were held unlawful.

But the King shall pay no Toll for any of his goods; and a man may be dischargeth from the payment of Toll by the King's grant.

Also tenants in ancient demesne are discharged of Toll throughout the kingdom, for things which arise out of their lands, or bought for manurance thereof, &c.

Toll doth not of common right belong to a fair; though it hath been held, that some Toll is due of common right, as appears from the immunities of several persons not to pay Toll; which proves that, if it was not for those privileges, they ought to pay Toll of common right; therefore where the King grants a market, Toll is due, although it is not expressed in the grant what Toll is to be paid; and this from the necessity of it, because the property of things sold in a market is not altered without paying Toll. Psalm, 76: 2 Latto. 1377. But it is said, that Toll is not incident of common right to a Fair. If the King grants to a man a Fair or Market, and grants no Toll, the patentee shall have no Toll; for Toll being a matter of private right for the benefit of the Lord, is not incident to a Fair or Market; as a Court of Piepowder is, which is for the benefit of the Public and advancement of justice, &c. Such a Fair or Market is free from Toll; and, after the grant made, the King cannot grant a Toll to such free Fair or Market, without some proportionable benefit to the Subject. And if the Toll granted with the Fair or Market be outrageous, the grant of the Toll is void; and the same is a free Market, &c. 1 Inst. 559. And see 1 Wills. 109; and this Dict. titles Fairs; Markets.

When the King grants a Fair, he may likewise grant that Toll shall be paid, though it be a charge upon the Subjects, but then it must be of a very small sum. Toll is to be reasonable, for the King cannot grant a burdenome Toll; and one may have Toll by prescription for some reasonable cause; but such a prescription to charge the Subject with a duty of Toll, must import a benefit or recom pense for it, or some reason must be shown why it is claimed. Cro. Eliz. 559; 3 Leae. 424: 2 Mod. 143: 4 Mod. 593. The Toll in Fairs is generally taken upon the sale of Cattle, as Horses, &c.; but, in the Markets, for Grain only; and the Lord may seize until satisfaction is made him. It is always to be paid by the Buyer, unless there be a custom to the contrary; and nothing is tollable before the sale, except it be by custom time out of mind; which custom none can challenge that claim the Fair or Market by grant since the reign of King Richard II.; so that it is better to have a Market or Fair by prescription, than grant. 2 Inst. 220, 221.

At this day there is not any one certain Toll to be taken in Markets; but if that which is taken be unreasonable, it is punishible by the Stat. 3 Ed. 1. c. 31. And what shall be deemed reasonable, is to be determined by the Judges of the Law, when it comes judicially before them. Toll may be fixed to be unreasonable and outrageous, when a reasonable Toll is due, and excessive Toll is taken; or when no Toll is due, and Toll is unjustly usurped, &c. 2 Inst. 222. If excessive Toll be taken in a Market Town by the Lord's consent, the Franchise shall be forfeit; and if by other Officers, they shall pay double damages, and suffer imprisonment, &c. Stat. Wilms. 1. 3 Ed. 1. c. 31.

Owners of Markets and Fairs are to appoint Toll-takers, where Toll is to be taken, under penalties.
TOLL.

Stat. 2 & 3 Ph. & M. c. 7. And he that hath the Toll, or profit of the Market, where no Toll is, ought to provide a lawful measure of brass, and chain it in the public Market-place, or shall forfeit s l. Stat. 22 Car. 2. c. 8.

The remedy for taking Toll where none is due, or for taking excessive Toll, is by action of trespass, or an action on the case; and, in some cases, by indictment. See title Extortion. Where the party is exempt from Toll, he may have his remedy on the ancient writ De effendo quietum, &c.

It was finally determined in the Houfe of Peers, after a long contest, that this writ De effendo quietum, &c. is not merely prohibitory, but remedial; on which the parties may plea to a issue on a question of right. And where it is directed to a Corporation, the Corporation cannot be attached for contempt, in their corporate capacity, for not returning it; but an Attachment, in the nature of a Pone, is the proper remedy to compel them to appear. The great question, as to the exemption of the Citizens of London from Toll, was also determined, viz. that Freemen of the city of London have a right to be exempt from the payment of all Tolls and Port-duties throughout England, (except the prizes of Wines,) in whatever place they reside; and though they have obtained their freedom by purchase. 1 H. Blac. Rep. C. B. 266. This judgment of the Court of Common Pleas was reversed by the Court of K. B. (see 4 Term Rep. 130) but affirmed in Parliament, May 2, 1796.

London (Corporation.) King's Lynn (Corp.)

Port-Toll. A prescription to have Port-Toll for all Toll coming into a man's Port, may be good. 2 Lev. 96: 2 Lev. 1519. The liberty of bringing goods into a Port for safety, implying a conferation in itself. 3 Lev. 37. Prescription of Toll for goods landed in a manor, or to have Port-Toll for all goods coming into Port, is a good prescription; but not to have Toll of goods brought into a river. &c. 2 Lev. 96, 97. Toll may be appurtenant to a manor. 2 Mod. 144.

Toll-Travers, or Traverse, is where one claimeth to have Toll for every beast driven across his ground; for which a man may prescribe, and disfrain for it in his Regia. Cro. Eliz. 710. They who claim these Tolls by grant, ought to aver the certainty of the same mentioned in the grant, &c. Pain. 76. Toll-travers being to pass a nearer way, he that has it is to repair the way, because he receives money for it. 2 Litt. Abr. 585.

Toll-averse, Is properly when a man pays certain Toll for passing over the toll of another man in a way not a high street. 22 Aff. 53. And for this Toll a man may prescribe. 2 Ret. Abr. 622: Cro. Eliz. 710: Mar. 574.

Trousers. Toll. Is when a town prescribeth to have Toll for such a number of Beasts, or for every Beast that goeth through their town; or over a Bridge or ferry maintained at their cost; which is reasonable, though it be for passing through the King's highway, where every man may lawfully go, as it is for the ease of travellers that go that way. Term. & Hy. 561, 562.

Persons may have this Toll by prescription or grant; but it must be for a reasonable cause, which must be shown, viz. that they are to repair or maintain a causeway, or a bridge, or such like. Cro. Eliz. 711. The King granted to a man, to take such Toll of persons that paid over certain bridges, with their Cattle, as was taken there and elsewhere in England, &c.; and it was held void for uncertainty. Bridg. 88.

The words Toll-thorough and Toll-traverse are used promiscuously. A man cannot prescribe to have Thorough-Toll of men passing through a vill in the high street, because it is against the Common Law and common right, for the high street is common to all, without alleging of a special consideration, as the repairing the way. And the King cannot have such Toll for passing in the high street, as in the case aforesaid, for the cause aforesaid. 2 Roll. Abr. 542: 22 Aff. 58.

A man cannot prescribe to have Thorough-Toll of men passing through a vill in a place which is not the high street; for it is more than the Law allows to go there. 2 Roll. Abr. 542: 22 Aff. 58.

Turn-Toll, A Tollpaid for beasts that are driven to market to be sold, and do return unfold. 6 Rep. 46. There is also in Toll and out Toll, mentioned in ancient Charters.

Tollage, Is the same with Tollsage; signifying generally any manner of custom or imposition.

Toll-Booth, The place where goods are weighed, &c.

Toll-Corn, Corn taken for Toll ground at a mill; and an indictment lies against a miller for taking too great Toll. 5 Moi. 15: Ed. Rym. 159. See title Extortion.

Toll-Hop, A small Ditch or Measure, by which Toll is taken in a market, &c.

Tolsester, Tolsey, Tolsester, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tolsey, Tot}
TORT

TORTFEASOR, Fr. Tortfeasor.] A wrong doer, a trespasser.

TORTITIUM. A torch. Fl. a.

TORTURE. The Statute Law of England doth very seldom, and the Common Law doth never, inflict any punishment extending to life or limb, unless upon the highest necessity; and the Constitution is an atter stranger to any arbitrary power of killing or maiming the subject without the express warrant of Law. "Nullus liber homo, satis est, Great Charter (c. 29), aliquo modo destrueri, nisi per legale judicium parium suorum aut per legem terrae." Which words, "Aliquo modo defrauatur," according to Sir Edward Coke, (2 Inst. 481) include a prohibition not only of killing, and maiming, but of torturing (to which our laws are stranger) and of every oppression by colour of an illegal authority.

The Prima fueri et dure, formerly inflicted on prisoners standing mute, and which was the only species of punishment, in the nature of torture, allowed by the Common Law, is now repealed by Stat. 12 Geo. 3. c. 28. See title Mutm.

The rack, or question, to extort a confession from criminals, is a practice of a different nature; the prima fueri et dure having been only used to compel a man to put himself upon his trial; that being a species of trial in itself. And the trial by rack is utterly unknown to the Law of England. See Pajlow. Coll. i. 638: 4 Comm. c. 25.

No peron to be subject to Torture in Scotland. Stat. 7 Ann. c. 21.

TOTIES QUOTIES. As often as a thing shall happen, &c. See Stat. 19 Car. 2. c. 4.

TOTTED. A good debt to the King, is by the foreign apposer or officer in the Exchequer noted for such by writing the word Tot to it; and that which is paid shall be Totted. Tot omnes rigi debitor. Stat. 42 Ed. 3. c. 9: 1 Ed. 6. c. 15.

TOURN; See Turn.

TOURNAMENTS; See Turn.

TOUT TEMPS PRIST ET UNCORE EST, i.e. Always was, and is present ready. See title Tenter.

TOWAGE. Touogum. Fr. Towage.] The towing or drawing of a ship or barge along the water by another ship or boat fastened to her; or by men or horses, &c. on land: It is also money which is given by bargemen to the owner of ground next a river where they tow a barge or other vessel. Plac. Partl. 18 Ed. 1.

TOWN. Oppidum, Villa.] A walled place or borough: The old boroughs were fit of all Towns; and upland Towns, which are not ruled and governed as boroughs, are but Towns, though inclosed with walls. Finch. So there ought to be in every Town a Confiacle, or Tithing-man; and it cannot be a Town unless it hath or had a church, with celebration of sacraments and burials, &c. But if a Town is decayed so that it hath no houses left, yet it is a Town in Law. 1 Inst. 115.

Under the name of a Town, or Village, boroughs, and it is said, cities are contained; for every borough or city is a Town. See City. Where a murderer escapec unknown in a Town, in the day-time, the Town shall be amassed. Stat. 3 Hen. 7. c. 1. — A Township is answerable for felons goods to the King, which may be seized by them. But by Stat. 31 Ed. 3. c. 3, if it can alledge any thing in discharge of itself; and by which another doth become chargeable, it shall be heard, and right administered.

TOWN-Clerk. Ought not to be a Popish recusant convict. Stat. 3 Jac. 1. c. 5. — How to deliver a schedule of fines, &c. to the Sheriff. And a duplicate into the Court of Exchequer. Discharging or concealing an indictment. &c. leviable to a forfeiture of treble the penalty incurred by the original offence. Stat. 22 & 33 C. 2. c. 22. May be a mercy by the Barons of the Exchequer; and which amercements are leviable according to the usual practice. Stat. 3 Geo. 1. c. 15. § 12.

TRA-BARLE. Little boats, so called from their being made out of single beams, or pieces of timber cut hollow. Florence of Worcester, p. 618.

TRA-BIES. In church, were what we now call branches, made usuall with brais, but formerly with iron. Cowell.

TRACTUS. A tree by which horses in their gears draw a cart, plough, or waggon. Parv. Antiq. 459.

TRADE, In general signification, is traffic or merchandise: Also a private art, and way of living. Trading with enemies is generally prohibited by positive statutes in time of war. See title Fire-dog.

It was formerly held that none of the King's subjects might trade to and with a nation of Infidels without the King's leave, because of the danger of relinquishing the fidelity. And Sir Edward Coke said, That he had seen a licence from one of our Kings, granting to them, having a special trust and confidence that such a one, his subject, would not decline his faith and religion, licensed him to trade with Infidels, &c. 3 Nefl. Ab. 331.

As to private Trades, at Common Law, none was prohibited to exercise any particular Trade, wherein he had not any skill or knowledge; and if he used it unskilfully, the party grieved might have his remedy against him by action on the case, &c. By Stat. 3 Edw. 4. a man must serve seven years apprenticeship before he can set up any Trade; see title Apprentices. An indictment on the statute for exercising a Trade at that time in Great Britain, quashed; it should have been England, there being no such kingdom as Great Britain. 1 Strange 552; 2 Strange 388; 1 Rep. 53.

If a bond or promise restrains the exercise of a Trade, though it be to a particular place only, if there was no consideration for it, it is void; if there be a consideration, in such a case it may be good: But if the restraint be general throughout England, although there be a consideration, it will be void. 2 Litt. Ab. 179; Lord Raym. 1436; 2 Strange 379: see title Bond.

Frequent ads are paid to enable soldiers and sailors, having served his Majesty for certain terms, to exercise any Trades in Great Britain, though not regularly bred to them, or free of corporations or companies. See titles Navy; Soldiers.

TRADESMEN. Actum against. There is in Law, always, an implied contract with a common taylor, or other workman, that he performs his business in a workman-like manner; in which, if they fail, an action on the case lies to recover damages for such breach of their general undertaking, 11 Rep. 54; 1 Sound. 324. But if I employ a person to transfert any of these concerns, whose common profession and business it is not, the Law implies no such general undertaking; but, in order to charge him with damages, a special agreement is required, 3 Comm. 142.

TRAGA. A waggon without wheels; Mon. Ang. i. 851.

TRAIL.
Transportation.

The system of Transportation to the American Colonies continued for fifty-six years; during which period, and until the commencement of the American war in 1775, great numbers of felons were sent, chiefly to the province of Maryland. The rigid discipline which the colonial laws authorized the masters to exercise over the servants, joined to the prospects which agricultural pursuits afforded, after some experience, held out to those convicts, tended to reform the chief part of the American Plantations. See this Dictionary, the System, Beneath.

The Convicts having accumulated greatly in the year 1776, and the intercourse with America being then shut up, it became indispensably necessary to send to some other expediency; and in the choice of difficulties the system of the Hulks was suggested, and first adopted under the authority of a statute, 16 Geo. 3.

The Legislature, uncertain with regard to the faculties of this new species of punishment, and wishing to make other experiments, by an act of the same session empowered the Judges of every county in England, to prepare houses of correction for the reception of convicts under sentence of death, to whom his Majesty should extend his royal mercy, to be kept at hard labour for a term not exceeding ten years. The same act, among many other excellent regulations, ordered the convicts to be kept separate, and not allowed to mix with any offenders convicted of crimes less than larceny; and that they should be fed with coarse, inferior food, water, and small beer, and clothed at the public expense; without permission to have any other food, drink, or clothing than that allowed by the act, under certain penalties. As an encouragement to these delinquents, while such as refused to work were to receive corporal punishments, those who behaved well had not only the prison held out of the period of their confinement being shortened, but they were also to receive decent clothes, and a sum of money not less than 40s. nor more than 5l. when charged. Stat. 16 Geo. 3, c. 43.

This very salutary act was followed up three years afterwards by another statute; viz. Stat. 19 Geo. 3, c. 34; 35,This had two very important objects in view:

The first was to erect in some convenient common or waste ground in Middlesex, Essex, Kent, or Surrey, two large Penitentiary Houses; one for 6oo male, the other for 30o female convicts; with proper offices, gardens, &c.
TRANSPORTATION.

It is much to be lamented, that neither of these statutes, so far as regarded Penitentiary Houses, which seemed to hold out so fair a prospect of employing convicts, in pursuits connected with productive labour, and ultimate reformation, without sending them out of the kingdom, have been carried effectively into execution; for in the year 1764, the system of Transportation was again revived; by an act which empowers the Court, before or after a felon has been convicted, the prisoner to be transported beyond seas, either within his Majesty's dominions, or elsewhere; and his service to be assigned to the contractor, who shall undertake such Transportation. Stat. 24. Geo. 3. b. 2. c. 56.

The same act continues the system of the Hulks for a further length of time, by directing the removal of convicts under sentence of death, and reprieved by his Majesty, and also such as are under sentence of Transportation, (being free from infectious disorders,) to other places of confinement, either inland, or on board of any ship or vessel in the river Thames, or any other navigable river; and to continue them so confined, until transported according to law, or until the expiration of the term of the sentence should otherwise entitle them to their liberty. The plan of Transportation, through the medium of the contractors, (although some felons were sent to Africa,) does not appear to have answered; from the great difficulty of finding any situation since the independence of America, where the services of convicts could be rendered productive or profitable, to enrich the merchants who would undertake to transport them. Hence arose the idea of making an establishment for these Outcasts of Society on the eastern coast of New South Wales, more generally known by the name of Botany Bay, from a bay on the coast so named by Captain Cook, and where the first convicts were landed; to which remote region it was at length determined to transport atrocious offenders. Accordingly, in the year 1787, an act passed authorising the establishment of a Court of Judicature for the trial of offenders who should be transported thither. Stat. 27. Geo. 3. c. 2.

An act of the following year empowered his Majesty, under his sign manual, to authorise any person to make contracts for the Transportation of offenders; and to direct to whom security should be given for the due performance of the contract. Stat. 28. Geo. 3. c. 24.

By a subsequent act, the Governor of the Settlement may remit the punishment of offenders there; and on a certificate from him, their names shall be inserted in the next General Pardon. Stat. 30. Geo. 3. c. 47.

Under these various legislative regulations, the two systems of punishments, namely, the Hulks, and Transportation, are now regulated.

The System of the Hulks first commenced on the 1st July 1776, and from that time until December 12, 1798, 8000 convicts were ordered for punishment by hard labour on the river Thames, and at Long ton and Penf'mouth harbours. The expense of these establishments has been £1. 5s. 6d. per day for the maintenance of each Convict; the bounties to discharged convicts, and the expense of chaplain and coroner, about £40 p. annum. The earnings of the convicts about three-fifths of the expense incurred by their maintenance. Tenants on Police.

The first embarkation to New South Wales commenced in 1787; and in the month of May in the following year, 1030 male and female convicts were landed on the new colony.

The expence to be paid by Government, and his Majesty to appoint a Committee of three persons to regulate the establishment, under the control of the Justices of Peace, and Judges of Assize; with power to appoint officers with salaries, to be paid out of the profits of the work to be performed by the convicts. In these Penitentiary Houses, persons convicted of transportable offences were to be confined to hard labour in the proportion of five years' labour to seven years' Transportation, and not exceeding four years' labour in lieu of fourteen years Transportation. The number of convicts to be sent from the circuits, or the Metropolis, being limited accordingly. These Convicts were to be employed in works of the most servile kind, and such as were least liable to be spoilt by ignorance, neglect, or obstinacy, viz. Treading in a wheel for moving machinery; drawing in a capital for turning a mill; sawing stone; polishing marble; beating hemp; raising logwood; making cordage; picking oakum; weaving sacks; making nets, &c. The food and drink of the offenders to be bread and coarse meat, with water or small beer, and their clothing to be uniform, with badges affixed. Other rules were also to be established under the direction of the Committee, who were to attend every fortnight, and to have power to reward the diligent with a part of their earnings; and when an offender was discharged, he was to have decent clothing, and from 20s. to 3l. in money.

The second purpose of this act (and which is the only part of it that has ever been carried into effect) regards the continuation of the system of the Hulks. It declares, that for the more effectual punishment of atrocious male offenders liable to be transported, the Court may order such convicts as are of proper age, and free from bodily infirmity, to be punished, by being kept on board ships or vessels, and employed in hard labour, in raising sand, coal, and gravel, and cleaning the river Thames, or any other river or port approved of by the Privy Council; or in any other works upon the banks or shores of the same, under the direction of superintendents approved of by the Justices, for a term not less than one year, nor more than five; except any offender to be liable to Transportation for fourteen years, in which case his punishment may be commuted for seven years on board the Hulks. The mode of feeding, clothing, and discipline, similar to that already explained, is established, and on discharge the convicts are to receive from 20s. to 3l. according to circumstances.

The concluding part of the act obliges the governors and superintendents of the two establishments, to make annual returns to the Court of King's Bench; and also authorises his Majesty to appoint Inspectors of the Penitentiary Houses, of the Hulks, and of all the other gaols and places of criminal confinement in London and Middlesex: these Inspectors personally to visit every such place of confinement at least once in three months, to examine into the particulars of each, and to make a return to the Court of King's Bench of the state of the buildings, the conduct of the officers, treatment of the prisoners, state of their earnings and expenses; and to follow up this by a report to both Houses of Parliament at the beginning of each Session. It is believed, that the yearly report to the Court of King's Bench by the Superintendent of the Hulks, is the only part of the act that is in any degree punctually complied with.
TRAVERSE

TRAVELLERS; See title Inn and Innekeepers.

Theft rules are to be observed in Traverses: 1. The Traverse of a thing not immediately alleged, vitiated a good bar. 2. Nothing must be traversed but what is expressly alleged. 3. Surplusage in a plea doth not inform a Traverse. 4. It must be always made to the substantial part of the title. 5. Where an act may indifferently be intended to be at one day or another, the day is not traversable. 6. In action of trespass, generally the day is not material; though, if a matter be to be done upon a particular day, there it is material and traversable. 2 Roll. Rep. 37; 1 Roll. Rep. 235: 12 T. R. 12; 2 Litt. Abr. 317. If the parties have agreed on the day for a thing to be done, the Traverse of the day is material; but where they are not agreed on the day, it is otherwise; and though 'tis proved to be done on another day, 'tis sufficient. Palm. 280.

Where a Traverse goes to the matter of a plea, &c., all that went before is waved by the Traverse; and if the Traverse goes to the time only, it is not waved. 2 Sail. 642. — In action of trespass, a particular place and time were laid in the declaration, and in the plea there was a Traverse as to the place, but not as to time: On avowment that it was tamen transgresso, the plea was held good. 3 Lev. 237; 2 Litt. 270. Where a plea in justification of a thing is not local, a Traverse of the place is wrong. 2 Mod. 270. Where a justification in trespass, relates to a particular place, different from the Place laid in the declaration, 'tis proper to add a Traverse at the end of the plea. f. B.

The substance and body of a plea must be traversed. Hob. 232. — But a Traverse that a person died feized of land in fee male & forma as the defendant had declared, was adjudged good. Hutt. 123. — A Lord and tenant

Any fact which appears to be material is traversable, though it be only on suspicion; as in prohibition, a suspension of a refusal by the Spiritual Court, of a plea (which ought to be allowed) in a suit there for titles, or other matter of their cognizance, is traversable; otherwise their jurisdiction might in any case be taken away by such suspicion. 2 Co. 45, 6. So any formula which takes away the jurisdiction of the Court is traversable.

Cro. Eliz. 514. But a Traverse of a thing, not necessary to be alleged, is bad. Cro. Car. 378. So of matter of mere supposition, or inducement. Com. Dig. title Pleading. (G. 13, 14.)

As one Traverse is enough to make a perfect issue, a Traverse cannot be regularly taken upon a Traverse, if it is well taken to the material point, and goes to the substance of the action; but where the first Traverse is not well taken, nor pertinent to the matter, there, to that which was sufficiently confessed and avoided before, the other party may well take a Traverse after such immaterial Traverse taken before: And if special matter alleged in a foreign county in the defendant's plea be false, the plaintiff may maintain his action, and traverse that special matter; and in such case a Traverse on a Traverse hath been adjudged good: but a Traverse after a Traverse may be allowed; as in trespasses in every county, defendant pleads a concord for trespasses in every other county, and traverses the county; the plaintiff may join issue on the county, or traverse the concord. 1 Hagg. 389; 4 Mo. 428; 1 Stand. 32; Poph. 101.

colony. In 21 months after, there were 77 deaths, and 87 births in the whole Settlement; which was divided, by placing a part of the Convicts on Norfolk Island, a small fertile spot, containing only about 14,000 acres of land, and situated about 1200 miles distant from Sydney Cove in New South Wales, where the seat of Government was fixed.

In this project considerably above 500,000 d. has already been expended by Government. Many inconveniences and hardships have been felt, and repeated supplies of all sorts have been sent thither from Great Britain. With regard to subsistence, there is now a prospect of the Colony maintaining itself; but not much of its yet proving at all advantageous to this country.

A hope was probably entertained, that the great expense of the passage home, the fertility of the soil, and salubrity of the climate, would induce Convicts to remain there after the expiration of their sentence. Experience, however, has shown that these circumstances have not operated to prevent the return of many atrocious and adroit offenders; nor has the length and hardship of the voyage thither, nor other evils attending it, operated to decrease the number here hable to suffer the punishment of Transportation. Treatise on Police.

TRANSPORTATION, of goods and merchandise, is allowed or prohibited, in many cases by statute, for the advantage of trade. See title Navigation Acts.

TRANSUBSTANTIATION, Transubstantiation. Is a converting into another substance: To transubstantiate, i.e. convert. In Latin Substantian convertere. Litt. Dist. A declaration against the doctrine of Transubstantiation maintained by the Church of Rome, is required by the Act 30 Geo. 2, c. 2. c. 1. See title Papists.

A declaration, he ought to make a Traverse to a declaration, he need not take a Traverse; for when the party that has pleaded his declaration, he ought to traverse that part of it, the doing whereof will make an end of the matter, when the points

TRAVERSE.

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TRAVELSE.

TRAVELSE, A kind of fishermen on the river Thames, who used unlawful arts and engines to destroy fish; of these some were termed Travellersmen, others Fishermen, and Travellersmen. And hence comes to trawl or trawl for pikes. See also the f. 1208.

TRAVELBASTON; see the title in the Act.

See copies of several commissions granted to them by Edward the First, in the City of London, etc. See also the Act.

Edward the First, in his thirty-second year, issued a writ of inquisition, called Travels, against intruders on other men's lands, who, to oppress their right owners, would make over their lands to great men, against batters hired to beat men, breakers of the peace, ravellers, incendiaries, murderers, fighters, false aspers, and other such malcontents; which inquisition was so strictly executed, and such fines taken, that it brought in great treasure to the King. See also the Act.


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TREASON I. II.

IV. Of other Treasons, by Statutes subsequent to Stat. 25 E. 3.

V. Of the Proceedings and Judgment in Trials for High Treason.
1. The Indictment, and Steps previous.
2. The Trial, and Judgment.

I. TREASON, in its very name, imports a betraying, treachery, or breach of faith. It therefore happens only between allies, faith the Mirror; for Treason is indeed a general appellation, made of by the Law, to denote not only offences against the King and Government, but also that accumulation of guilt which arises, whenever a Superior reproves a confidence in a Subject of Inferior, between whom and himself there subsists a natural, civil, or even a spiritual relation; and the inferior so abuses that confidence, to forgets the obligations of duty, subjection, and allegiance, as to defend the life of any such Superior or Lord. This is looked upon as proceeding from the same principle of treachery in private life, as would have urged him who harbours it to have conspired in public against his liege Lord and Sovereign; and therefore for a wife to kill her lord or husband, a servant his lord or master, and an ecclesiastic his lord or Ordinary; these, being breaches of the lower allegiance, of private and domestic faith, are denominated Petit Treasons. See title Petty Treason.—But when idly so far it creft, as to attack even Majesty itself, it is called by way of eminent distinction a High Treason, alta pravitas, being equivalent to the crime lese Majestatis of the Romans, as Glanville denominates it also in our English Law. 4 Comm. c. 6.

The greatness of this offence of Treason and severity of the punishment thereof, is upon two reasons; because the safety, peace, and tranquillity of the kingdom, are highly concerned in the preservation of the person and government of the King; and therefore the Laws have given all possible security thereto, under the severest penalties: And as the Subjects have protection from the King and his Laws; so they be bound by their allegiance to be true and faithful to him. 1 Hale's Hist. P. C. 59.

As this is the highest civil crime, which (considered as a member of the Community) any man can possibly commit, it ought therefore to be the most precisely ascertained. For if the crime of High Treason be in determinate, this alone (says Montesquieu) is sufficient to make any Government degenerate into arbitrary power. And yet, by the ancient Common Law, there was a great latitude left in the breach of the Judges, to determine what was Treason, or not so; whereby the creators of tyrannical Princes had opportunity to create abundance of constructive Treasons; that is, to raise, by forced and arbitrary constructions, offences into the crime and punishment of Treason, which never were suspected to be such. Thus, in the reign of Edward 1, appealing to the French Courts, in opposition to the King's, was in Parliament solemnly adjudged High Treason. 3 Inst. 7: 1 Hale 70; and this under the idea of Subverting the realm.—Another charge, the addressing, or attempting to exercise, royal power (a very uncertain charge,) was, in the 21 Edw. III, held to be Treason in a Knight of Hertfordshire, who forcibly afflicted and detained one of the King's Subjects, till he paid him 90l; a crime, it must be owned, well deserving of punishment; but which seems to be of a complexity very different from that of Treason. 1 Hal. P. C. 80. Killing the King's Father, or Brother, or even his Mettenger, has also fallen under the same declaration. 8 Brtt. P. C. c. 17, § 1.

But however, to prevent the inconveniences which begin to arise in England from this multitude of constructive Treasons, the Stat. 25 Edw. 3, § 5, c. 2, was made; which defines what offences only for the future should be held to be Treason. See pp. III.

Nothing can be confused to be Treason under this statute which is not literally specified therein; or may the statute be confused by equity, because it is a declarative Law, and one declaration ought not to be the declaration of another; besides, it was made to secure the Subject in his life, liberty, and estate, which, by admitting constructions to be made of it, might destroy all. 1 Hale. P. C. 34: 3 Salk. 359.

This statute, after reciting that divers opinions having been, what cases should amount to High Treason, enacts and declares, That if a person doth compale or imagine the death of the King, Queen, or their eldest son and heir; or if he do violate and deflower the King's wife or companion, or his eldest daughter unmarried, or the wife of the King's eldest son; or if he levy war against the King in his realm, or adhere to his enemies, give them aid and comfort in the realm, or elsewhere, and thereof be probably (or provably) attainted of felony; and if a man counterfeits the King's Great or Privy Seal, or his money, or bring false money into the kingdom, like to the money of England, to make payment therewith in deceit of the King and his People; or if he kill the Chancellor, Treasurer, or any of the King's Justices in either Bench, Justices of Assize, &c. being in their places, doing their offices, these cases are to be adjudged Treason.

II. Every Subject of Great Britain, whether ecclesiastical or lay, man or woman, if of the age of discretion, and of sound memory, may be guilty of High Treason. 1 Hale. P. C. c. 17, § 4. If a married Woman commit High Treason, in the company of her Husband, or by his command, she is punishable as if unmarried; for in a crime of such magnitude, the presumption of coercion by the Husband is no excuse. 1 Hale. P. C. c. 1, § 11: 1 Hal. P. C. 47. A Soldier cannot justify by the command of his superior Officer, for, as the command is treacherous, so is the obedience. Kely. 15. Neither can a man justify, by acting as Counsel. Kely. 25. Madmen were heretofore punished as Traitors, particularly by Stat. 33 H. 8, c. 20: See title Idols V.; but now, they are not punishable, if the crime is committed during a total deprivation of reason. 1 Hal. P. C. 37. And this has been confirmed in modern cases; though the frequency of attempts against the person and family of King George III., by persons actually or pretendedly of that description, was extremely remarkable.

The Husband of a Queen regnant, as was King Philip, may commit High Treason. So may a Queen consort against the King her husband. Such were the cases of Queen Anne Boleyn and Catherine Howard. For the Queen...
Queen is considered, in the eye of the Law, as a distinct person, for many purposes. 3 Inst. 8.

Aliens may commit Treason; for as there is a local protection on the King's part, so there is a local allegiance on theirs. 7 Rep. 5. There is no distinction whether the Alien's Sovereign is in amity or enmity with the Crown of England. If during his residence here, under the protection of the Crown, he does that which would constitute Treason in a natural-born Subject, he may be dealt with as a traitor. 1 Hal. P. C. 60. So also if he resides here, after a proclamation of war; unless he openly removes himself, by passing to his own Prince, or publicly renounces the King of England's protection, which is analogous to a dissolution, or defiance; and then, under such circumstances, he is considered as an enemy. 1 Hal. P. C. 92. Thus the Marquis De Guiffards, a French Papist, residing here, during a war, under the protection of Queen Anne, was charged with holding a traitorous correspondence with France. And two Portuguese were indicted and attain'd and attain'd of High Treason, for joining in a conspiracy with Dr. Lopez to poison Queen Elizabeth. 7 Rep. 6: Dy. 144.

If an Alien, during a war with his native country, leaving his family and effects here, goes home, and adheres to the King's enemies, for the purposes of hostility, he is a traitor; for he was as he was settled here, and his family and effects are still under the King's protection. 1 Salk. 46: 1 Leig. case 282: Fost. 185: 186. In declarations of war, it has been frequently used to except, and take under the protection of the Crown, such resident aliens as demean themselves dutifully, and neither assist or correspond with the enemy. In that case, they are upon the footing of Aliens coming here by licence or safe conduct, and are considered as alien friends. 1 Fost. 185.

If an Alien is charged with a breach of his natural allegiance, he may give allegiance in evidence, for he is charged with a breach of that species of allegiance, which is not due from an Alien. 4 St. Tri. 699, 700.

Aliens merchants are protected by the Statute Staple, in case of a war, which provides, that they shall have convenient warning, by forty days proclamation, or eighty days in case of extremity, to avoid the country. after which time, they may be dealt with as traitors, for any treasonable act; if after that time, they reside and trade here, as before, they may be either treated as alien Enemies, by the Law of Nations, or as Traitors by the law of the land. 1 Hal. P. C. 93, 94. See May. Cart. c. 50: Stat. 27 E. 3. 2. cc. 2413, 17, 19, 20.

Subjects of the King in open war or rebellion, are not the King's Enemies, but Traitors; and if a Subject join with a foreign Enemy, and come into England with him, if he be taken prisoner, he shall not be ransomed or proceeded against as an Enemy, but as a Traitor to the King: on the other hand, an Enemy coming in open hostility into England, and takes, shall be either executed by Martial Law, or ransomed; for he cannot be indicted of Treason, because he never was within the allegiance of the King. 3 Hal. P. 111: 7 Rep. 6, 7: 1 Hal. P. 100.

A Natural-born Subject cannot abuse his allegiance, and transfer it to a foreign Prince. Neither can any foreign Prince, by naturalizing, or employing a Subject of Great Britain, dissolve the bond of allegiance between that Subject and the Crown. 1 Com. 359. This was determined, in the case of Andrew Macdonald, who was born in Great Britain, but educated from his early infancy in France; and being appointed commissary of the French troops intended for Scotland, was taken prisoner, tried, and found guilty of High Treason. Puf. 62: 9 Sta. Tri. 585.

It is a question, whether the general exemption of Ambassadors from the cognizance of the Municipal Tribunal, extends to Treason? On the one hand, there is a positive breach of local allegiance; on the other, an infringement of the privilege of personal inviolability, universally allowed by the Law of Nations. Coke maintains, that if an Ambassador commits Treason, he loses the privilege and dignity of an Ambassador, as unworthy of so high a place, and may be punished here, as any other private Alien, and not reminded to his Sovereign, but of courtesy. 4 Inst. 153. Most writers agree that an Ambassador, conspiring the death of the King, or raising a Rebellion, may be punished with death. But it is doubted, whether he is obnoxious to punishment for bare conspiracies of this nature. 1 Bell. Rep. 185: 1 Hal. 66, 97, 99.

The Bishop of Rye, Ambassador from Mary Queen of Scots, to Elizabeth, was committed to the Tower, as a confederate with the Duke of Norfolk, for corresponding with the Spanish Ministry, to invade the kingdom; he pleaded his privilege, and afterwards, having made a full confession, no criminal process was commenced. 1 Hal. P. C. 97: 1 St. Tri. 145. But he was afterwards banished the country. The Spanish Ambassador for encouraging Treason, and the French Ambassador for conspiring the fame Queen's death, were only imprisoned. Doctor Story was condemned and executed, but he was an Englishman by birth, and therefore could never shake off his natural allegiance. Dyer 298, 300: 3 St. Tri. 775.

From this view we may collect, that the right of proceeding against Ambassadors for Treason, in the ordinary course of justice, has been waved, from motives of policy and prudence; and that they have seldom been proceeded against farther than by imprisonment, seizing their papers, and sending them home in custody. As was done in the case of Count Cullumbry the Spanish Minister in George the Second's time. Fost. 187. See 1 Conn. 254: Ward's Law of Nations.

But, according to the Law of Nations, it seems that the Universal Invulnerability of Ambassadors, is of more consequence than the punishment of any crime that may be committed by them; and that whatever crimes Ambassadors may commit, whether against the positive Municipal Law of the land where they reside, or against the general Law of nature, though it may be right to treat them as Enemies, that is, if they were in open hostility, yet neither ought more violence to be shown than the necessity of self-defence exactly requires, nor can they ever be made subject to any sort of judicial process. In cases of delinquency an Ambassador is to be stripped of his functions, and sent back to his Master, with a request for his punishment; and if his Master refuse, he makes the act his own; and the Nations are then in a state of hostility. See Ward on the Law of Nations, where this subject is ably and fully treated. It must be understood, that the above applies only to Ambassadors received and acknowledged as such. See this Dict. title Ambassador.

III. 1. The
TREASON III. I.

III. I. The first Treason described by the Stat. 25 E. 3. P. C. c. 2. is, 1 'When a man doth compas or imagine the death of our Lord the King, our Lady his Queen, or of their eldest Son and Heir.'—Under this description it is held that a Queen Regnant (such as Queen Elizabeth or Queen Anne) is within the words of the act, being invested with royal power, and entitled to the allegiance of her subjects. 1 Hal. P. C. 101:—But the husband of such a Queen is not comprised within these words, and therefore no Treason can be committed against him. 3 Inf. 7. 1 Hal. P. C. 106.

Though the compassing the death of the Queen Consort be Treason, this must be intended during the marriage; for it doth not extend to a Queen Dowager. And the eldest Son and Heir of the King, that is living, is intended by the fals act, though he was not the first Son; but if the Heir Apparent to the Crown be a collateral Heir, he is not within the statute; nor is a conspiracy against such collateral Heir, Treason by this act. 3 Inf. 8.

At common Law, compailing the death of any of the King's children, and declaring it by overt act, was taken to be Treason; though by this statute it is restrained to the eldest Son and Heir. 1 Hal. P. C. 125.

The King, intended by the act, is the King in possession, without any respect to his title; for it is held, that a King de facto and not de jure, or in other words an Ulirper that hath got possession of the Throne, is a King within the meaning of the statute; as there is a temporary allegiance due to him for his administration of the Government, and temporary protection of the public; and therefore Treasons committed against Henry VI. were punished under Edward IV., though all the LINE of Lancaster had been previously declared Ulirpers by Act of Parliament. But the most rightful Heir of the Crowns, or King of joyre and not de jure, who hath never had plenary possession of the Throne, as was the case of the House of York during the three reigns of the Line of Lancaster, is not a King within this statute, against whom Treasons may be committed. 3 Inf. 7. 1 Hal. P. C. 104.

And a very sensible writer on the Crown-Law carries the point of possession so far, that he holds, that a King is not out of possession so far from having any right to our allegiance, by any other title which he may set up against the King in being, that we are bound by the duty of our allegiance to refit him. A doctrine which he grounds upon the Stat. 11 Hen. 7. c. 1. which is declaratory of the Common Law, and pronounces all Subjects excused from any penalty, or forfeiture, who do assist and obey a King de facto. 1 How. P. C. c. 17. §§ 14—18. But this seems, says Blackstone, to be confusing all notions of right and wrong; and the consequence would be, that when Cromwell had murdered the elder Charles, and usurped the power (though not the name) of King, the People were bound in duty to hinder the Son's restoration; and were a foreign King to invade this kingdom, and by any means to get possession of the Crown, (a term, by the way, of very loose and indistinct signification,) the Subject would be bound by his allegiance to fight for his natural Prince to-day, and by the same duty of allegiance to fight against him to-morrow. The true distinction seems to be, that the statute of Henry VII. does by no means command any opposition to a King de jure; but excuses the obedience paid to a King de facto. When, therefore, an Ulirper is in possession, the Subject is executed and justified in obeying and giving him allegiance.

Nor is a Subject, under an Ulirper, no man could be liable if the lawful Prince had a right to hang him for obedience to the Powers in being, as the Ulirper would certainly do for disobedience. Nay, farther, as the laws of People are imperfect judges of title, of which in all cases possession is prima facie evidence, the Law compels no man to yield obedience to that Prince, whose right is by want of possession rendered uncertain and disputable, till Providence shall think fit to interpose in his favour, and decide the ambiguous claim. And therefore, till he be entitled to such allegiance by possession, no Treason can be committed against him. Lastly, a King who has reigned his Crown, such renunciation being admitted and ratified in Parliament, is, according to Hal, no longer the object of Treason. 1 Hal. P. C. 104. And the same reason holds, in case a King abdicates the Government; or, by actions subversive of the Constitution, virtually renounces the authority which he claims by the very Constitution: Since, when the fact of abdication is once established, and determined by the proper Judges, the consequence necessarily follows, that the Throne is thereby vacant, and he is no longer King. 4 Comm. c. 6.

Let us next see, what is compelling or imagining the death of the King, &c. These are synonymous terms; the word compas signifies the purpose or design of the mind or will, and not, as in common speech, the carrying such design into effect. 1 Hal. P. C. 107. And therefore, it has been held, that an accidental stroke, which may mortally wound the Sovereign, per se justifica, without any traitorous intent, is no Treason; as was the case of Sir Walter Tyrrel, who, by the command of King William Rufus, threw at a haw, the arrow glanced against a tree, and killed the King upon the spot. 3 Inf. 6. But, as this compelling or imagining is an act of the mind, it cannot possibly fall under any judicial cognizance, unless it be demonstrated by some overt (i.e. open) act; and therefore it is necessary that there appear an open or overt act of a more full and explicit nature, to convict the Traitor upon. The statute expressly requires, that the accused be thereof, upon sufficient proof, attainted, of some open act, by men of his own condition. Thus, to provide weapons or ammunition for the purpose of killing the King, is held to be a palpable overt act of Treason in imagining his death. 3 Inf. 12.

To compulse the King by force, and move towards it, by assembling company, is an overt act of compelling the King's death; for all force, used to the person of the King, in its consequence may tend to his death, and is a strong presumption of something worse intended than the present force by such as have so far thrown off their bounden duty to their Sovereign; it being an old observance, that there is generally but a short interval between the prisions and the graves of Princes. 1 Hal. P. C. 109. There is no question, also, but that taking any measures to render such treasonable purposes effectual, as assembling and conspiring on the means to kill the King, is a sufficient overt act of High Treason. 1 How. P. C. c. 17. § 31: 1 Hal. P. C. 119.

Mr. Justice Foster lays down generally, that the case the Law hath taken for the personal safety of the King, 3.
TREASON III. 1, 2.

is not confined to actions or attempts of the more flagitious kind, to assassination or poison, or other attempts immediately and directly aimed at his life: It is extended to every thing wilfully and deliberately done or attempted, whereby his life may be endangered. Foj. 195.

It has been adjudged, that he who intended by force to preclude the King to the King, and to restrain him of his power, death indeed to deprive him of his Crown and life; that if a man be ignorant of the intention of those who take up arms against the King, if he join in any action with them, he is guilty of Treason; and that the Law construes every rebellion to be a plot against the King's life, and a depopulating him, because a rebel would not suffer that King to reign and live, who will punish him for rebellion. More 290: 2 Salk. 63.

How far mere words, spoken by an individual, and not relative to any treasonable act or design then in agitation, shall amount to Treason, has been formerly matter of doubt. Two instances occurred in the reign of Edward IV. of persons executed for treasonable words:

The one a citizen of London, who said he would make his Son Heir of the Crown, being the sign of the house in which he lived; the other a gentleman, who was favourite with the King killed in hunting, whereupon he induced it, horns and all, in the King's belly. These were esteemed hard cases; and the Chief Justice Markham rather chose to leave his place than silent to the latter judgment. 1 Hal. P. C. 115.

It was resolved in the trial of the Regicides, that though a man cannot be indicted of High Treason for words only, yet if he be indicted for conspiring the King's death, these words may be laid as an overt act, to prove he conspired the death of the King; and to support this opinion, the case of a person was cited who was indicted of Treason, anns 9 Car. 1., for that he, being the King's Subject at Lisbon, used these words: "I will kill the King, (towards King Charles,) if I may come to him," and afterwards he came into England for that purpose; and two merchants proving that he spoke the words, for that his traitorous intent, and the wicked imagination of his heart was declared by these words, it was held to be High Treason by the Common Law, and within the statute of the 25 Ed. 3. c. 2.; Cro. Car. 242: 1 Lev. 57.

But now it seems clearly to be agreed, that, by the Common Law, and the statute of Edward III. words spoken amount only to a High Misdemeanor, and no Treason: For they may be spoken in heat, without any intention; or be mistaken, perverted, or misrepresented by the hearers; their meaning depends always on their connexion with other words, and things; they may signify differently even according to the tone of voice with which they are delivered; and sometimes silence itself is more expressive than any discourse. As therefore there can be nothing more equivocal and ambiguous than words, it would indeed be unreasonable to make them amount to High Treason. And accordingly, in 4 Car. 1, on a reference to all the Judges, concerning some very atrocious words spoken by one Frye, they certified to the King, "That though the words were as wicked as might be, yet they were no Treason; for, unless it be by some particular statute, no words will be Treason." Cro. Car. 125. See 1 Hal. P. C. 111-120; 312-312.

Fol. 196—207. From which authorities it may be concluded, that bare words are not overt acts of Treason, unless uttered in contemplation of some traitorous purpose actually on foot or intended; and in prosecution of it: As if they are attended or followed by a consultation, meeting, or any act, then they will be evidence, or a confession of the intent of such meeting, consultation, or act.

Ever since the Revolution, it has been the constant practice, where a person, by treasonable discourses, has manifested a design to murder or depose the King, to convict him upon such evidence. And Chief Justice Holt was of opinion, that express words were not necessary to convict a man of High Treason; but if, from the tenor of his discourse, the jury were satisfied he was engaged in a design against the King's life, this was sufficient to convict the prisoner. 4 State Trials 172.

If the words be set down in writing, it argues more deliberate intention; and it has been held that writing is an overt act of Treason; for sufficient of agere. But even in such cases the bare words are not the Treason, but the deliberate act of writing them. And such writing, though unpublish'd, has even in some arbitrary reigns convicted the author of Treason; particularly in the case of one Peacock, a Clergyman, for treasonable passages in a sermon never preach'd; and of Algernon Sydney, for some papers found in his closet; which, had they been plainly relative to any previous formed design of deposing or murdering the King, might doubtless have been properly read in evidence as overt acts of that Treason, which was specially laid in the indictment. 570. But being merely speculative, without any intention (so far as appeared) of making any public use of them, the conviction the authors of Treason upon such an inchoate foundation has been universally disapproved. Peacock was therefore pardoned; and though Sidney indeed was executed, yet it was to the general discontent of the Nation; and his attainder was afterwards reversed by Parliament. There was then no manner of doubt, but that the publication of such a treasonable writing was a sufficient overt act of Treason at the Common Law; though, of late, even that has been questioned. 1 Hal. P. C. 118; 1 Halk. P. C. c. 17. § 35. 45.

2. The next species of Treason to be considered is, "If a man do levy war against our Lord the King in his realm." And this may be done by taking arms, not only to dethrone the King, but under pretence to reform Religion or the Laws, or to remove evil Counsellors, or other grievances, whether real or pretended. 1 Halk. P. C. c. 17. § 35. So it was held, in the case of Lord G. Gordon, that an attempt, by intimidation and violence, to force the repeal of a Law, is a levying war against the King, and High Treason. Doug. 570.

Per the Law does not, neither can it, permit any private man, or set of men, to interfere forcibly in matters of such high importance; especially as it has established a sufficient power, for these purposes, in the High Court of Parliament. Neither does the Constitution justify any private or particular refitance, for private or particular grievances; though, in cases of national opposition, the Nation has very justifiably risen as one man, to vindicate the original contract fulfilling between the King and his People. To resist the King's forces, by defending
defending a Castle against them, is a levying of war; and so is an insurrection, with an avowed design to pull down all inclosures, all brothels, and the like; the universality of the design making it a rebellion against the State, and usurpation of the powers of Government, and an inolent invasion of the King's authority. 1 Hal. P. C. 152. But a tumult, with a view to pull down a particular house, or lay open a particular inclosure, amounts at most to a Riot; this being no general defiance of public Government. So, if two Subjects quarrel and levy war against each other, it is only a great Riot and Contempt, and no Treason. Thus it happened between the Earl of Hereford and Gloucester, in 16 Edward I., who raised each a little army, and committed outrages upon each other's lands, burning houses, attended with the loss of many lives; yet this was held to be no High Treason, but only a great misdemeanour. 1 Hal. P. C. 156.

But in the case of a great riot in London by the Apprentices there, some whereof being the followers of the rebel conspirators to kill the Lord Mayor and release their comrades; and, in order to it, to provide themselves with armour, by breaking open two houses near the Tower: They marched with a cloak on a pole, instead of an ensign, towards the Lord Mayor's house; and in the way, meeting with opposition from the Sheriff, refited them: This was held levying of war, and Treason. Sid. 358.

Those who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, are said to levy war against the King, although they have no direct design against his person; as they are for doing that by private authority, which he by public justice ought to do, which manifestly tends to a rebellion. For example; where great numbers by force endeavour to remove certain persons from the King, or to lay violent hands on a Privy Counsellor, or revenge themselves against a Magistrate for executing his office, or to deliver men out of prison, expel foreigners, or to reform the Law of Religion, to pull down all bawdy-houses, to throw down all inclosures in general, &c. But where a number of men rise to remove a grievance to their private interest, as to pull down a particular inclosure, they are only Rioters; for there is a difference between a pretence that is public and general, and one that is private and particular. 1 H. C. 17. & 17 Geo. 3. Haw. P. C. 17. 65. 5.

It was resoloved by all the Judges of England, in the reign of King Henry VIII., that an insurrection against the statute of Labourers, for raising their wages, was a levying of war against the King; because it was generally against the King's Law, and the offenders took upon them the reformation thereof. Statutes, vol. 5. p. 156. Not only such as directly rebel and take up arms against the King, but also those who in a violent manner withstand his lawful authority, or attempt to reform his Government, do levy war against him; and therefore, to hold a Fort or Castle against the King's forces, or keep together armed men in great numbers, without the King's express command, have been adjudged a levying of war, and Treason. But those who join themselves to rebels, &c. for fear of death, and return the first opportunity, are not guilty of this offence. 3 Inf. 10; Kel. 76.

A person in arms was sent for by some of the Council from the King, and to give in the names of those that were armed with him; but he refused, and continued in arms in his house; and it was held Treason. Also, where one went with a troop of Captains and others into London, to pray help of the City to save his life, and bring him to Court to the Queen, though there was no intent of hurt to her, was adjudged Treason; and in them who joined with him, though they knew nothing but only a difference between him and some Courtiers. So if any man shall attempt to strengthen himself so far, that the Prince cannot refit him. E. of Essex's Case, Mor. 620.

A bare conspiracy to levy war does not amount to this species of Treason; but, if particularly pointed at the person of the King or his Government, it falls within the first, of compounding or imagining the King's death. 3 Inf. 9; E. of Essex's Case, Mor. 620.

By the Common Law, levying war against the King was Treason; But as, in cases of High Treason, there must be an overt act, therefore it is that a conspiracy, or compounding to levy war, is no overt act, unless a war is actually levied; though if a war is actually levied, then the conspirators are all Traitors, although they are not in arms. And a conspiracy to levy war will be evidence of an overt act to maintain an indictment for compounding the King's death; but if the indictment be for levying war only, proof must be made that a war was levied, to bring the offender under this clause of the statute. 3 Inf. 8, 9; H. P. C. 14. If two or more conspire to levy war, and one of them alone raises forces, this shall be adjudged Treason in all. Dyer 268.

2. * * * If a man be adherent to the King's enemies in his realm, giving them aid and comfort in the realm, or elsewhere, he is also declared guilty of High Treason. This must likewise be proved by some overt act, as by giving them intelligence, by sending them provisions, by telling them arms, by treacherously furnishing a fortress, or the like. 3 Inf. 10. Sending intelligence to the enemy of the designations and designs of this Kingdom, in order to affit them in their operations against us, or in defence of themselves, is High Treason, although such correspondence should be intercepted. 1 Burr. 650. So sending any intelligence to the enemy, in order to serve them in shaping their attack or defence, though its object be to dissuade them from an invasion, is High Treason. 6 Town. Rep. 520.

Officers or Soldiers of this realm, holding correspondence with any rebel, or enemy to the King, or giving them any advice, information by letter, meffages, &c., are declared guilty of Treason by Stat. 6 & 7 Ann. c. 20.

By Enemies are here understood the Subjects of foreign Powers with whom we are at open war. As to foreign Pirates or Robbers who may happen to invade our coasts, without any open hostilities between their nation and our own, and without any commission from any Prince or State at enmity with the Crown of Great Britain, the giving them any assistance is also clearly Treason; either in the light of adherence to the public enemies of the King and kingdom, or else in that of levying war against his Majesty. Pott. 219. And, most indisputably, the same acts of adherence or aid which, when applied to foreign enemies, will constitute Treason under this branch of the statute, will, when afforded to our own fellow-subjects.
subjects in actual rebellion at home, amount to High Treason, under the description of lying war against the King. Foot. 216. But to relieve a rebel, fled out of the kingdom, is no Treason; for the nature is taken strictly, and a rebel is not an enemy; an enemy being always the Subject of some foreign Prince, and one who owes no allegiance to the Crown of England. 1 Henrok. P. C. c. 17. § 28. And if a person be under circumstances of actual force and constraint, through a well-grounded apprehension of injury to his life or person, this fear or compulsion will excuse his joining with either rebels or enemies in the kingdom, provided he leaves them whenever he hath a fair opportunity, Foot. 216. See note I.

The delivery or surrender of the King’s Castles or Forts, by the Captains thereof, to the King’s enemy, within the realm or without, for reward, &c. is an adhering to the King’s enemies. A Lieutenant of Ireland let several rebels out of Dublin Castle, and discharged some forged collations which had been given for securing the peace; and for this he was attainted of High Treason in adhering to the King’s enemies, 33 H. 8. Adhering to the King’s enemies out of the realm is Treason; but such adherence out of the realm must be alleged in some place in England. 3 15. 10. 1 H. P. C. 14: Dier 258, 310. If there be war between the King of England and France, those Englishmen who live in France before the war, and continue there after, are not merely upon that account adherents to the King’s enemies, to be guilty of Treason, unless they actually swit in such war; or at least refuse to return into England upon a Privy Seal, or on Proclamation and notice thereof; and this refusal is but evidence of an adherence, and not so in itself. 1 Hale’s Hist. P. C. 162. Adhering to the King’s enemies is an adhering against him; and English Subjects joining with rebel Subjects of the King’s Allies, and fighting with them under the command of an alien enemy Prince, are guilty of Treason in adhering to the King’s enemies: So cruising in a ship with intent to destroy the King’s ships, without doing any act of hostility, is an overt act of adhering, companying, and aiding; for where an Englishman sits himself and marches, this is Treason, without coming to battle or actual fighting.

2 Salk. 634.

By stat. 35 Geo. 3. c. 27, called the Treasoners Correspondence Act, it was enacted, that if any person residing in Great Britain should, during the war with France, either on his own account or on account of any other person whatsoever, buy, sell, procure, or lend, or aid in so doing, for the use of the French armies, or of any person resident within the dominions of France, any ordnance, stores, tin, lead, or copper, except cutlery ware, not being arms, and except buttons, buckles, japanned wares, toys, and trinkets; or any bank notes, gold, or silver; or any provisions whatever, or any clothing for the armies or fleets; or any leather wrought or unwrought, without licence from the King or Privy Council, he shall be guilty of High Treason. And that every British Subject, who should purchase, or enter into any agreement for any land or real property in France, should also be guilty of High Treason.

4. The Legislature, in the reign of Edward III., was not only careful to specify and reduce to a certainty the vagaries of Treason that had formerly prevailed; but the statute goes on to state, that, “Because other like cases of Treason may happen in time to come, which cannot be thought of nor declared at present, it is agreed, that if any other case supposed to be Treason, which is not above specified, doth happen before any judge, the Judge shall tarry, without going to judgment of the Treason, till the caute be showed and declared before the King and his Parliament, whether it ought to be judged Treason, or other felony.” Sir Matthew Hale is very high in his encomiums on the great wisdom and care of the Parliament, in thus keeping Judges within the proper bounds and limits of this act, by not suffering them to run out (upon their own opinions) into constructive Treasons, though in cases that seem to them to have a like parity of reason; but reserving them to the decision of Parliament. This is a great security to the Public, the Judges, and even this sacred act itself; and leaves a weighty moment to Judges to be careful and not overhastily in letting in Treasons by construction or interpretation, especially in new cases that have not been resolved and settled. 2. He observes, that as the authoritative decision of these cases of Treason is referred to the King and Parliament, the most regular way to do it is by a new declarative act; and therefore the opinion of any one or of both Houses, though of very respectable weight, is not that solemn declaration referred to by this act, as the only criterion for judging of future Treasons.


Many obligations having been made use of, in the defence of several persons indicted for High Treason in 1704. (See title “Jury IV. 12”) to evade the meaning, direct or constructive, of the above statute, 25 E. 3: and doubts being entertained, in consequence, bow far the words of that act were applicable, with sufficient explicitness, to the modern treasonable attempts to overturn the Constitution, by means of tumultuous assemblies of the People; (See title “Riot III.”) The publication and dispersion of inflammatory works and speeches, against all the branches of the Legislature having increased to an enormous and very alarming degree, “with unremitting industry, and with a transcendent boldness.” The project of overawing Parliament, by means of mobs and their leaders, having been repeatedly ascertained: And, finally, his Majesty King George III. having been violently attacked, the windows of his coach broken, and his person put in imminent danger, as he was proceeding to open the Parliament on the 29th of October 1795, the Legislature thought the following act absolutely necessary to explain and enlarge the clauses of the statute 25 E. 3, relative to the Treasons enumerated in the three preceding divisions.

It is therefore enacted, by the Stat. 36 Geo. 3. c. 7, (the recital of which alludes to the transactions just mentioned, “That if any person, during the life of his present Majesty, and until the end of the next Session of Parliament, after a demise of the Crown, fail, within the realm or without, compels, imagines, invents, devises, or intends death, or destruction, or any hostile harm tending to death or destruction, main or wounding, imprisoning or restraining of the person of the King, his Heirs and Successors; Or to deprive or deprive him or them from the style, honour, or kingdom name of the Imperial Crown of this
TREASON III. 4—7.

As a Queen Dowager after the death of her husband, is not a Queen within the statute; for though she bears the title, and hath many prerogatives answering the dignity of her person, yet she is not the King's Wife or Companion: So a Queen divorced from the King at a vincula matrimonii, is not Queen within this act, although the King be living: which was the case of Queen Katharine, who, after twenty years' marriage with King Henry VIII., was divorced causd effusitans. 1 Hale's Hist. P. C. 124.

7. "If a man counterfeit the King's Great or Privy Seal," this is also High Treason. But if a man takes wax bearing the impress of the Great Seal off from one patent, and fixes it to another, this is held to be only an abuse of the Seal, and not a counterfeiting of it: as was the case of a certain Chaplain, who in such manner framed a dispensation for non-residence. But the knavish artifice of a Lawyer much exceeded this of the Divine. One of the Clerks in Chancery glued together two pieces of parchment; on the uppermost of which he wrote a patent, to which he regularly obtained the Great Seal, the label going through both the skins. He then dissolved the cement; and taking off the written patent, on the black skin wrote a fresh patent, of a different import from the former, and published it as true. This was held no counterfeiting of the Great Seal, but only a great misprision; and Coke mentions it with some indignation, that the party was living at that day. 3 Lev. 15: 4 Coke, c. 5.

Counterfeiting the King's Seal was Treason by the Common Law; and the flat. 25 Ed. 3. b. 5. c. 6, mentions only the Great Seal and Privy Seal; for the counterfeiting of the Sign Manual, or Privy Signet, is not Treason within that act, but by flat. 1 Mary, b. 2. c. 6, those who aid and content to the counterfeiting of the King's Seal are equally guilty with the actors: But an intent or compassing to counterfeit the Great Seal, if it be not actually done, is not Treason; there must be an actual counterfeiting, and it is to be generally like the King's Great Seal. 3 Lev. 15: 8 P. C. 5: H. P. C. 18. This branch of the statute does not extend to the falsifying the Great Seal to a patent, without a warrant for doing so; nor to the rising any thing out of a patent, and putting new matter therein; yet this, like the taking off the wax imprisoned by the Great Seal, from one patent, and fixing it to another, though it be not a counterfeiting, has been adjudged a misprision of the highest degree: And a person guilty of an act of this nature, with relation to a commision for levying money, &c., had judgment to be drawn and hanged. 2 H. 4: 3 Lev. 16: 6 Ed. 8. Till a new Great Seal is made, the old one of a late King, being used and employed as such, is the King's Seal within the statute; notwithstanding its variance in the inscription, pomptum, and other embellishments: When an old Great Seal is broken, the counterfeiting of that Seal, and applying it to an infringement of that date wherein it flowed, or to any patent, &c., without date, is Treason. 1 Hale's Hist. P. C. 177. The adding a Crown in a counterfeited Privy Signet, which was not in the true; and omitting some words of the inscription, and involving others, done purposely to make a little difference, alters not the case, but it is High Treason; being published on a forged patent to be true, &c. 1 Hale, P. C. 184.

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this Realm, or of any other of his dominions: Or to levy war against his Majesty, his Heirs, and Successors within this Realm, in order, by force or constraint, to compel him or them to change or alter his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or coerce, both Houses, or either House of Parliament; Or to move or stir any foreigner with force to invade this realm, or any other of his Majesty's dominions; and such compellings, &c., shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed,* the offender shall be deemed a traitor, and punished accordingly. The benefits of 3 Lev. 7 W. 3—c. 3: 7 Ann. c. 11, (see p. 575), V. 3,) are referred to the offenders; and the act does not extend to prevent any prosecutions at Common Law.

5. The killing of the King's Chancellor, Treasurer, Justices of either Bench, &c., declared to be Treason, relates to no other officers of State besides those expressly named; and to them only when they are in actual execution of their offices, representing the person of the King, and it does not extend to any attempt to kill, or wounding them, &c. 3 Lev. 18, 38: H. P. C. 17. The places for the Justices to do their offices, are the Courts themselves, where they usually, or by adjournment, fit for dispatch of the business of their Courts. 1 Hale's Hist. P. C. 232. See titles Judges: Privy Council.

By 2 Hen. 7 Ann. c. 21, it is made High Treason to fly any of the Lords of Session in Scotland, or Lords of Justice, fitting in judgment; or to counterfeit the King's Seals appointed by the Act of Union. See p. 97.

6. It is also a species of Treason, under this statute 25 Ed. 3. q. 2. "If a man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and heir." By the King's Companion is meant his Wife; and by violation is understood carnal knowledge, as well without force as with it; and this is High Treason in both parties, if both be consenting, as some of the Wives of Henry VIII. by faulc transaction evinced. The plain intention of this Law is to guard the Blood Royal from any pollution basely, whereby the succession to the Crown would be rendered dubious; and therefore, when this reason operates, the Law (generally speaking) seizes with it; for to violate a Queen or Princess Dowager is held to be not Treason. 3 Lev. 9. But it has been remarked, that the inflictions specified in the statute do not prove much consistency in the application of this statute; for there is no preclusion given to the Wives of the younger Sons of the King, though their issue must inherit the Crown before the issue of the King's eldest Daughter; and her chastity is only inviolable before marriage, whilst her children would be clearly illegitimate. 4 Comm. c. 6, n.

The eldest Daughter of the King is such a Daughter as is eldest not married at the time of the violation, which will be Treason, although there was an eldest Daughter than her, who died without issue; for now the elder alone has a right to the inheritance of the Crown, upon failure of issue male. Violating the Queen's person, &c., war High Treason at Common Law, by reason it destroyed the certainty of the King's issue, and consequently raised contention about the succession. H. P. C. 18.
Chapter 3: Treason

8. The last species of Treason under this statute, according to our present division, is, "If a man counterfeit the King's money; and if a man bring false money into the realm counterfeit to the money of England, knowing the money to be false, to merchandise and make payment withal." As to the first branch, counterfeiting the King's money; this is Treason, whether the false money be uttered in payment or not. Also, if the King's own minters alter the standard or alloy established by Law, it is Treason. But gold and silver money only are held to be within the statute. With regard likewise to the second branch, importing foreign counterfeit money, in order to utter it here; it is held that uttering it, without importing it, is not within the statute. 1 Hawk. P.C. c. 17, § 55. See this Dictionary, title Coin.

If A. counterfeit money, and another vent the same for his own benefit, he is not guilty of Treason; for it is only a cheat and misdemeanor in him, punishable by fine and imprisonment: But if one counterfeits the King's money, though he never vents it, this is a counterfeiting, and Treason within the statute. And if any man doth counterfeit the lawful coin of this kingdom in a great measure, but with some variation in the impression, or yet it is counterfeiting of the King's money, and shall not evade the statute. 1 Hale's Hist. P.C. 214, 215.

False money brought into this kingdom, counterfeited like the money of England, must be knowingly brought over from some foreign nation, not from any place subject to the Crown of England; and must be uttered in payment. 3 Inst. 18. See title Coin.

IV. In consequence of the power, not indeed originally granted by the statute of Edward III., but constitutionally inherent in every subsequent Parliament, (which cannot be abridged of any rights by the act of a precedent one,) the Legislature was extremely liberal in declaring new Treasons in the unfortunate reign of King Richard II.; as particularly, the killing of an Ambassador was made so; which seems to be founded upon better reason than the multitude of other points, that were then strained up to this high offence: The most arbitrary and absurd of all which was by the Stat. 21 Ric. 2, c. 3, which made the bare purpose and intent of killing or dispatching the King, without any overt act, to demonstrate it High Treason. And yet so little effect have over-violent laws to prevent any crime, that within two years afterwards this very Prince was both deped and murdered, and in the first year of his successor's reign, an Act was passed, reciting, "That no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of Treason: And therefore it was accorded, that in no time to come any Treason be judged, otherwise than was ordained by the statute of King Edward the Third." This at once swept away the whole load of extravagant Treasons introduced in the time of Richard the Second. Stat. 3 Hen. 4, c. 10.

But afterwards, between the reign of Henry IV. and Queen Mary, and particularly in the bloody reign of Henry VIII., the spirit of inventing new and strange Treasons was revived; among which we may reckon the offences of clipping money; breaking prison or rescue, when the prisoner is committed for Treason; burning houses to extort money, stealing cattle by White.
High Treason, by stat. 1 Eliz. c. 1 during the life of that Princess, and after her decease it continued a high misdemeanour, punishable with forfeiture of goods and chattels, even in the most flourishing age of indefatigable hereditary right and juris divini succession. But it was never again raised into High Treason, by the statute of Anne before-mentioned, at the time of a projected invasion in favour of the then Pretender; and upon this statute one Matthews, a printer, was convicted and executed in 1719, for printing a treasonable pamphlet intitled Fox populi exo. 4 Crown c. 6.

VI. THOUGH the offence of Treason is not within the letter of the commission of Justices of the Peace, yet because it is against the peace of the King and of the Realm, any Justice may upon his own knowledge, or the complaint of others, cause any person to be apprehended, and commit him to prison. And the Justice may take the examination of the person apprehended, and the information of those who can give material evidence against him, and put the same in writing, and also bind over those, who can give any material evidence, to the Justices of Oyer and Terminer, or Gaol-delivery, and certify the proceedings to that Court where he binds over the informers. See title Justices of the Peace.

A Justice having no power to bail the offender, must commit him: and it may be advisable to lend an account immediately to the Secretaries of State. The Court of King's Bench, having power to bail in all cases whatsoever, may admit a person to bail for Treason done upon the High Seas: or a person committed for High Treason generally, if four terms have elapsed, and no prosecution commenced. Holt 83; 1 Sira. 2. The commitment may be for High Treason generally; and it is not necessary to express the overt act in the warrant.

The regular and legal way of proceeding in cases of Treason, and misprision of Treason, is by indictment. An Information cannot be brought in capital cases, nor for misprision of Treason. Anciently an appeal of High Treason, by one Subject against another, was permitted in the Courts of Common Law, and in Parliament; and if committed before the Session, it was committed by the Justices of the High Constable and Marshal. See title Appeal. And as to proceedings by Impeachment, see that title.

By the Common Law, no Grand Juries can indict any offence whatsoever, which does not arise within the limits of the precincts for which they are returned; therefore they are enabled, by several statutes, to inquire of Treasons committed out of the county. See title Indictment II.

Offenders guilty of High Treason by being concerned in the rebellion in the first year of King Geo. I. were to be tried before such Commissioners of Oyer and Terminer and Gaol-delivery, and in such county as his Majesty by any Commission under the Great Seal should appoint, by lawful men of the same county, as if the act had been there committed. This was only to perform actually in arms. Stat. 1 Geo. c. 33.

The Venue, or place laid in the Indictment where the offence was committed, must generally be laid in that county where the offence was actually committed, unless a statute gives a power to the contrary. If Treason is committed in several counties, the Venue may be laid in any one of them. 4 Sta. Tri. 640. If Treason is committed out of the realm, the Venue may be laid in any county within the realm, where the Treason is appointed to be inquired into. See title Indictment.

Wales is within the kingdom of England. But if any Treason respecting the Coin is committed in Wales, the Venue may be changed to the next adjoining county in England, where the King's Writs run. 2 Hawke. P. C. c. 25. 49. 51. See stat. 26 H. 8. c. 6. In Chedley's case, who was indicted for Petit Treason, it was doubted whether a certiorari lay to remove the indictment from the Grand Sessions at Anglesea into an adjoining county. Cro. Cas. 33. But it seems a certiorari may issue for a special purpose, as to quash the indictment for insufficiency; or to plead a pardon; but not as to trial of the fact, but it must be sent down by minimus. 1 H. 6 P. C. 158.

By stat. 7 Ann. c. 21, if Treason is committed by any native of Scotland, upon the High Seas, or in any place out of the realm of Great Britain, it may be inquired of in any shire or county, that is adjacent by the commission. Therefore the venue may be laid in such county, as if the Treason was actually committed there.

This stat. 7 Ann. c. 21, also enabled, that the crimes of High Treason, and Misprision of Treason, shall be exactly the same in England and Scotland: and that no acts in Scotland (except laying the Lords of Session, &c. see above, Div. 5), shall be construed High Treason in Scotland, which are not High Treason in England. And all persons prosecuted in Scotland for Treason, or Misprision of Treason, shall be tried by a jury, and in the same manner as if they had been prosecuted for the same crime in England.

It has been resolved, that if Treason is committed in Ireland, it may be laid and tried in England, in pursuance of stat. 35 Hen. 8. c. 21. 1 Sta. Tri. 189. In the case of Lord Maguire, the Venue was laid in Middlesex, though the war was levied against the King in Ireland. 1 Sta. Tri. 950. But see title Ireland.

The Indictment must be drawn with great form and accuracy: For there can be no conviction of Treason, where the crime is not formally laid, even though the facts charged amount to Treason. 2 Sta. Tri. 868, 869. The day laid in the indictment is of incumbrance and form only, and not material in point of proof. Thepleadings are not material in the time laid. 3 Inf. 230. 4 Eliz. 16.

There must be a specific charge of Treason. And since the treasonable intent is the gist of the indictment, the Treason must be laid to have been committed traitorously; this would being indispensible requisite. If the charge is for compounding the King's death, the words of the stat. 25 Ed. 3. or stat. 26 Geo. 3. as the case may be, must be strictly pursued. The indictment must charge, that the defendant did traitorously compell and imagine, &c. And then proceed to lay the several overt acts, as the means employed for executing his treasonable purpose.

Levying war may be charged as a distinct species of Treason, according to the statute; or it may be laid as an overt act of compounding.

There must be an overt act laid. It is not necessary that the overt act be laid to have been committed traitorously, because that is not the offence; but if the Treason consists not in the intention, but in the act, as levying war, then it must be laid to have been done traitorously.
TREASON V. 1, 2.

It has been doubted, whether an overt act is required for any other species, except that of compounding or imagining the King's death; but since the words of fin. 25 Edw. 3.

'and therefor be provably attained by overt acts,' relate to all the Treasons, an overt act is required for each. 5 Sta. Tr. 21: 2 Salk. 854.

Though a specific overt act must be alleged, yet it is not necessary that the whole detail of evidence intended to be given should be laid forth; it is sufficient that the charge be reduced to a reasonable certainty, so that the defendant be apprised of its nature. Neither is it necessary to prove the overt act committed on the particular day laid. 5 Fitter 194: 5 Sta. Tr. 607.

As there must be an overt act laid, so that which is laid must be proved; for if another act than what was laid was sufficient, the prisoner would never be provided to make his defence. But if more than one are laid, the proof of any one will maintain the indictment. Also if one overt act is proved, others may be given in evidence to aggravate the crime, and render it more probable. 1 Hale P. C. 121, 122.

It has been said that every overt act of compas- sing is transitory, it may be proved in a different county from where the Treason is laid. Kel. 17. But in Luger's case, Chief Justice Pratt laid it down as clear Law, that there must be an overt act proved in the county where the indictment is laid; and that then the defendant may be charged with any overt act of the same species of Treason, in any county whatsoever. 6 State Trials 319.

The compas sing is considered as the Treason, and the overt act as the method of effecting it. — As to what shall be considered as an overt act, see generally Sil. 31.

In Indictments upon the clause of the statute for levying war, which Sir Matthew Hale calls an obscure clause, it is not necessary to lay the day with precision. 9 Sta. Tr. 550. But there must be an overt act shown in the indictment, upon which the Court may judge upon the question of fact, whether war is levied or conspired. And this is usually done by setting forth, that the insurgents were arrayed in a warlike manner, were armed, or were conspiring to procure arms for the purpose of arming themselves. 2 Vent. 316, Harington's Cafe.

2. If the Defendant is in custody before the finding of the indictment, the next step is the arraignment. But if he absconds or secretes himself, still an indictment may be preferred against him in his absence; and if it is found, process issues to bring him into Court.

The first process is a Capias. At Common Law, in cases of Treason, there was but one capias; and as this has not been altered by statute, upon a non satis inventus returned, an exqistent is awarded, in order to proceed to outlawry. 2 Hale P. C. 194.

But if the indictment is originally taken in the King's Bench, the fin. 6 Hen. 6. c. 1, specially provides, that before any exqistent awarded, the Court shall issue a capias to the Sheriff of the county where the indictment is taken, and another to the Sheriff of that county where the defendant is named in the indictment, having six weeks' time or more before the return; and after these writs returned, the exqistent to issue as before. 2 Hale P. C. 195.

A capias and exqistent may issue against a Lord of Parliament; although, in civil cases, they cannot. 2 Hale P. C. 199.

If the offender is out of the realm, the process is of the same effect as if he was resident in the realm. Com. Dig. tit. Indict. p. 513.

The punishment for Outlawries, upon indictments for misdemeanors, is the same as for Outlawries in civil actions. But an outlawry in Treason amounts to a conviction and attaint of the offence charged in the indictment, as much as if the offender was found guilty by his country. See the Outlawry.

By fin. 5 & 6 Eliz. c. 11, a party within one year after the outlawry for Treason, may surrender himself to the Chief Justice of England, and traverse the indictment, and being found thereon not guilty, shall be acquitted.

By the word provably (or probably) attained, in the fin. 25 Eliz. 3.; a person ought to be convicted of the Treason on direct and manifest proofs, and not upon pre-suppositions or inferences; and the word attained necessarily implies, that the prisoner be proceeded against and attainted according to due course of Law; wherefore, if a man be killed in open war against the King, or be put to death arbitrarily, or by Martial Law, and be not attainted of Treason, according to the Common Law, he forfeits nothing; for which cause some portions, killed in open rebellion against the King, have been attainted by Act of Parliament. 3 Ann. 12.

The next proceeding is the arraignment, but previous to this, and the trial, the prisoner is entitled to many important privileges, conferred upon him by the fin. 7 Will. 3. c. 7; 7 Ann. c. 21; which are the standard for regulating trials, in cases of Treason and Mispri son.

By the fin. 7 Wil. 3. c. 7, which extends to all cases of High Treason, whereof corruption of blood may enue, (except Treason in counterfeiting the King's Coin or Seals,) or Mispri son of such Treason, it is enacted, First, That no person shall be tried for any such Treason, except an attempt to assassinate the King; unless the indictment be found within three years after the offence committed: Next, That the prisoner shall have a copy of the indictment, (which includes the caption,) but not the names of the witnesses, five days at least before the trial; that is, upon the true construction of the act, before his arraignment; for then is his time to take any exceptions thereto, by way of plea or demurrer. See P and. 220, 226; Doug. 192. Thirdly, That he shall also have a copy of the panel or jurors two days before his trial: And, lastly, that he shall have the same compulsory process to bring in his witnesses for him, as was usual to compel their appearance against him. And, by fin. 7 Ann. c. 21, (which did not take place till after the decease of the late Pretender,) all persons, indicted for High Treason or Mispri son thereof, shall have, not only a copy of the indictment, but a list of all the Witnesses to be produced, and of the prosecutor impanneld, with their professions and places of abode, delivered to him ten days before the trial, and in the presence of two witnesses; the better to prepare him to make his challenges and defence. But this last act, so far as it affected indictments for the inferior species of High Treason, repealing the Coin and the Royal Seals, is repealed by fin. 6 Geo. 3. c. 3; else it had been impossible to have tried those offences in the same circuit in which they are indicted.
TREASON V. 2, 3.

clear days, between the finding and the trial of the indictment, will exceed the time usually allotted for any Session of Oyer and Terminer. Fopl. 250.

It is the practice to deliver the copy of the indictment, and the list of witnesses and jurors, ten clear days, exclusive of the day of delivery and the day of trial: and of intervening Sundays previous to the trial. Fopl. 2, 230.

We cannot help repeating in this place the opinion of the just and venerable Judge Foster, on the subject of the indulgence given to prisoners accused of High Treason, by the above statute. No one will dare to suggest that that eminent writer on Crown Law, was, in the least degree, an advocate for oppression or arbitrary power.

The furnishing the prisoner with the names, professions, and places of abode of the witnesses and Jury, so long before the trial, may serve many bad purposes, which are too obvious to be mentioned; one good purpose, and but one, it may serve. It gives the prisoner an opportunity of informing himself of the characters of the witnesses and Jury. But this single advantage will weigh very little in the scale of justice or found policy, against the many bad ends that may be answered by it. However, if it weighteth any thing in the scale of justice, the Crown is entitled to the same opportunity of sifting the character of the prisoner's witnesses. Fopl. 250.

Equal justice is certainly due to the Crown and the Public. For, let it be remembered, that the Public is deeply interested in every prosecution of this kind, that is well founded. Or shall we presume that all the management, all the plotting upon the hopes or fears of witnesses, lie on our side? It is true, power is on the side of the Crown: May it, for the sake of the constitutional rights of the Subject, always remain where the wisdom of the Law hath placed it! But in a Government like ours, and in a most changeable climate, Power, if, in criminal prosecutions it is but subjected to aim at oppression, generally disarranges itself. It raiseth and giveth countenance to a spirit of opposition, which falling in with the pride or weakness of some, the false patriotism of others, and the sympathy of all, not to mention private attachments and party connections, generally turns the scale to the favourable side; and frequently against the justice of the cause. Fopl. 251.

If there is any objection to the copy, as if it does not appear before whom the indictment was taken, or that it was taken at all, or in what place, this must be objected to before the plea. For the copy is given the prisoner to enable him to plead; therefore, by pleading, he admits that he has had a copy, sufficient for the purpose intended by the act. 4 Sta. Tri. 689.

The reason of giving the prisoner a copy of the panel, is, that he may inquire into the characters and qualifications of the Jury, and make what challenges he thinks fit: But the copy may be delivered antecedent to the panel returned by the sheriff. For if he has a copy of the panel arrayed by the sheriff, which is afterwards returned into Court, and there is no variation from it, the end and intent of the act is entirely purposed. 4 Sta. Tri. 649, 665, 664. 2 Doug. 590.

By the same Stat. 7 W. 3. c. 3, the prisoner is allowed to make his defence by Counsel. And the Court is authorized to assign him Counsel, not more than two in number, who shall have free access to him at all seasons.
or prosecuted for certain Treason, unless within three years after it is committed. See ante V. 2.

A Demurrer admits the facts stated in the indictment, but refuses the law arising upon them to the determination of the Court. As if the prisoner insists that the fact as stated is no Treason.

After plea, the Jurors are sworn, unless challenged by the party.

A peremptory challenge of thirty-five jurors, is at this day allowable in cases of High Treason. For though the 33 Hen. 8. c. 23, enacted, that in cases of High Treason or Misprision of Treason, a peremptory challenge should not be allowed: yet the 1 & 2 P. & M. c. 10, enacted, that all trials for any Treason shall be according to the order and course of the Common Law, which allowed this privilege. 3 Ld. 7, 295; 2 Hale P. C. 259; and see stat. 7 W. 3. c. 3. § 2.

But by stat. 13 H. 8. c. 12, which seems to be still in force, for Treasons committed in the King's household, and tried before the Lord Steward, all challenge, except for malice, is taken away. See 2 Hale P. C. 272.; and further this Dictionary, title Jury.

After the Jury are sworn, and the indictment opened, the next step is proceeding to evidence of the charge.

The 97 W. 3. c. 3. § 2, enacted, that no person shall be indicted, tried, or attainted for High Treason or Misprision, except upon the oaths of two lawful witnesses; either both of them to the same overt act, or one of them to one, and the other to another overt act of the same Treason; unless the prisoner willingly, without violence, in open Court, confesses the same: or stands mute; or refuses to plead; or, in cases of High Treason, peremptorily challenges more than thirty-five of the Jury.

At Common Law, one positive witness was sufficient. But several statutes previous to the act of William required two; but a collateral fact, not tending to the proof of the overt acts, may be proved by one, § 5 St. Tr. 29.

If two distinct heads of Treason are alleged in one bill of indictment, one witness produced to prove one of the Treasons, and another witness to prove another of the Treasons, are not two witnesses to the same Treason, according to the intent of the act.

As to the confession, there have been doubts whether the statute requires a confession upon the arraignment of the party; or a confession taken out of Court by a person authorized to take such examination. Evidence of a confession proved upon the trial by two witnesses has been held sufficient to convict, without farther proof of the overt acts. Fosser 241. This point is however not clearly settled. But such confession out of Court is evidence admissible, proper to be left to a Jury, and will go in corroborations of other evidence to the overt acts.

In an indictment for compounding the King's death, the being armed with a dagger, for the purpose of killing the King, was laid as an overt act; and being armed with a pistol for the same purpose, as another overt act; it was held, that proving one overt act by one witness, and the other by a different witness, was good proof by two witnesses within the meaning of the act.

An overt act not laid may be given in evidence, if it be a direct proof of any of the overt acts that are laid. Fosser 9. And after the overt act has been proved in the proper county, evidence of overt acts, though done in foreign counties, is admissible; and such evidence was given upon most of the trials after the rebellions of 1715 and 1745. Fosser 10.

The same rules of evidence are observable in cases of Parliamentary Impeachments, as in the ordinary Courts of Justice.

We have seen that the prisoner is entitled by the act 7 W. 3. c. 3. to have a similar process in the Court to compel witnesses to appear for him, to that which is usually granted to compel witnesses to appear against him, and by stat. 1 & 2 Hen. 4. c. 9. § 8, the witnesses on the behalf of prisoners, before they give evidence, are to take an oath to depose the whole truth, &c., as the witnesses for the Crown are obliged to do. And if convicted of wilful perjury in their evidence, they shall suffer the usual punishment.

The Jury must be unanimous, and give their verdict in open Court. No privy verdict can be given. 2 H. P. C. 300.

Upon the trial of Peers, in the Court of the Lord High Steward, a major vote is sufficient either to acquit or condemn; provided that vote amount to twelve or more. K. y. 50, 57. Therefore it has been usual to summons not less than twenty-three Peers. See title Peers.

After the trial and conviction, unless the prisoner has any thing to offer in arrest of judgment, the judgment of the Court is awarded.

The Punishment of High Treason, in general, is very solemn and terrible. 1. That the offender be drawn to the gallows, and not be carried, or walked; though usually (by convenience, at length ripened by humanity into law) a fledge or hurdle is allowed, to preserve the offender from the extreme torment of being dragged on the ground or pavement. 2. That he be hanged by the head, and then cut down alive. 3. That his entrails be taken out, and burned, while he is yet alive. 4. That his head be cut off. 5. That his body be divided into four parts. 6. That his head and quarters be at the King's disposal. 4 Comm. 1. 6.

The King may, and often doth, discharge all the punishment, except beheading, especially where any of noble blood are attached. For, beheading being part of the judgment, that may be executed, though the rest be omitted by the King's command. But where beheading is no part of the judgment, as in murder or other felonies, it has been said that the King cannot change the judgment, although at the request of the party, from one species of death to another. See title Execution of Criminals.

In the case of Coining, which is a Treason of a different complexion from the rest, the punishment is milder for male offenders; being only to be drawn, and hanged by the neck till dead. But in Treasons of every kind, the punishment of Women is the same, and different from that of men. For, as the decency due to the sex forbids the exposing and publicly mangling their bodies, their sentence is now to be drawn to the gallows, and there to be hanged. See 50 Geo. 3. c. 48; and title Judgment, Criminal.

Upon a writ of error to reverse an attainder in Treason, because the party convicted was not asked what he had to say why judgment should not be given against him, the attainder was reversed; for he might have a pardon, or some matter to move in arrest of judgment. 2 Salk. 639; 3 Mod. 265, And the omission of any necessary part of the judgment for Treason, is error.
PETIT-TREASON.

PETIT TREASON, Is where one, out of malice, takes away the life of a Subject, whom he owes special obedience. And it is called Petit Treason in respect to High Treason, which is against the King. 3 Inl. 20. See title Homicide III. 4. Aiders, Abettors, and Procurers are within the statutes. 25 E. 2: but if the killing is upon a sudden falling out, or f e defendat suo, it is not Petit Treason; for persons accused of Petit Treason shall be adjudged not guilty, or principal and accessory, according to the rules of Law in other cases.

If a Servant kills his Mistrefs, or the Wife of his Master, the is Master within the letter of the statute, and it is Petit Treason. But this statute is so strictly construed, that no cafe, which cannot be brought within the meaning of the words of it, shall be punished by it; and therefore, if a Son kills his Father, he shall not be tried for Petit Treason, except he served his Father for wages, in which case he shall be indicted by the name of a Servant; and yet the offence is more heinous by far in a Child than a Servant. 3 Inl. 20: H. P. C. 23: 11 Reg. 34. A Servant procured another to kill his Master, who killed him in the Servant's presence; this was Petit Treason in the Servant, and murder in the other. If the Servant had been absent, the crime would not have been Petit Treason, but Murder, to which he would have been accessory. 3 Inl. 20: More 91. A Maid Servant and a Stranger conspired to rob the Mistrefs; and in the night the Servant opened the door and let the Stranger into the house, who killed her Mistress, the lighting her to her bed, but neither saying nor doing anything, only holding the candle; and this was held Murder in the Stranger, and Petit Treason in the Servant. Dyer 128.

If a Wife and a Stranger kill the Husband, it is Petit Treason in the Wife, and Murder in the Stranger. And so it is of an ecclesiastic person killing his Prelate, &c. Dall. 337. If a Wife and her Servant conspire to kill the Husband, and appoint time and place for it, but the Servant alone in the absence of the Wife kills him, it shall be Petit Treason in both. And if the Wife procures a Servant to kill the Husband, both are guilty of Petit Treason; also, if a Stranger procures a Wife or Servant to kill the Husband or Master, he may be indicted as accessory to Petit Treason. Dyer 128: 335: Cramp. 41.

Where the Wife, and another who was not her Servant, conspired the death of the Husband, the indictment was, that the Wife proterenti, and the other person solus, gave him poison, &c. whereof he died; and the Wife being acquitted on the indictment, she brought an action against her Son-in-law for a malicious profe-

cution, and recovered damages; but afterwards he brought an appeal of Murder against her, upon which she was convicted in E. R., and carried down into the county where the fact was done, and there executed. Cro. Car. 33: 18: Med. Ca. 217: 1 Nuff. Ab. 372.

On a Divorce from the Husband for Adultery, a woman is a Wife within the statute to be guilty of Petit Treason against her Husband; for they may cohabit again. But where a man marries a second Wife, the former being alive, she is not within this Law. 1 Holt's Hist. P. C. 381.

If a Clergyman be ordained by the Bishop of A., and he kills that Bishop, it is Petit Treason, for he hath professed canonical obedience to him. And where a Parson hath benefices in two dioceses, if he kill the Bishop of either, it is Petit Treason; but in case he kill a Bishop out of the diocese where he is beneficed, it is only Murder. A Parson kills the Metropolitan of his province, this will be Petit Treason, though he be not his immediate Superior. 1 Holt, P. C. 381.

TREASURE-TROVE, Theaures inventus; French, trauve, found.] Money or coin, gold, silver, plate, or bullion, found hidden in the earth or other private place, the owner thereof being unknown. In such case, the Treasure belongs to the King, and is part of his ordinary revenue; but if he that hid it be known, or afterwards found out, the owner, and not the King, is entitled to it. 3 Inl. 132: Dalk. of Steffy, c. 16. Also, if it be found in the sea, or upon the earth, it doth not belong to the King, but to the finder, if no owner appears. Peti. c. 17: Finch. L. 172. So that it seems to be the hiding, and not the abandoning of it, that gives the King a property: Straton defining it, in the words of the Civilian, to be unius depositio pecuniae: 1 3. c. 3. § 4. This difference clearly arises from the different intentions which the Law implies in the owner. A man that hides his Treasure in a secret place, evidently does not mean to relinquish his property; but reserves a right of claiming it again when he sees occasion; And if he dies, and the secret also dies with him, the Law gives it to the King in part of his royal revenue. But a man that flatters his Treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and retained it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant or finder, unless the owner appear and assert his right, which, then proves that the lods was by accident, and not with an intent to reconize his property. 1 Comm. c. 8.

Formerly, all Treasure-trove belonged to the finder. Brad. l. 5. c. 3: 3 Inl. 133: Kitch. 80. Afterwards it was judged expedient for the purposes of the State, and particularly for the Coinage, to allow part of what was so found to the King; which part was assigned to be all hidden Treasure; such as is casually lost and unclaimed, and also such as is designedly abandoned. Still remaining the right of the fortunate finder. And that the Prince shall be entitled to the hidden Treasure is now grown to be, according to Grostorph, "just communes, it quasi sententiae: for it is not only observed, but adds, in England, but in Germany, France, Spain, and Denmark. The finding of deposited Treasure was much more frequent, and the Treasures themselves more com-

siderable.
TREATY

TRES

considerable, in the infancy of our Constitution, than at present; and therefore the punishment of such as concealed from the King the finding of such hidden Treasure was formerly no less than death; but now it is only fine and imprisonment. Gloss. 1. 1. c. 2. 3 Inf. 133.

Nothing is said to be Treasure-trove but gold and silver. It is every Subject’s part, as soon as he has found any Treasure in the earth, to make it known to the Constables of the county, &c. Britton, cap. 17: S. P. C. 25. Coroners, to inquire of Treasure-trove, being certified thereof by the King’s Bailiffs, or others, and of who were the finders, &c. 4 Edw. 1. fl. 2. And feizes of Treasure-trove may be inquired of in the Sheriff’s torn. 2 Herne. P. C. 16. c. 37.

TREASURE. [Thesaurarius.] An Officer to whom the Treasure of another is committed to be kept, and truly disposed of. The chief of these with us is the Lord Treasurer of England, who is a Lord by his office, and one of the greatest men of the kingdom. This great Officer holds his place durante bene placito, and is instituted by the delivery of a white staff to him by the King; and in former times he received his office by delivery of the golden keys of the Treasury: He is also Treasurer of the Exchequer, by letters patent. By stat. 51 Edw. 3. fl. 1. c. 12, in writs of error the Lord Chancellor and Lord Treasurer shall cause the record and process of the Exchequer to be brought before them, who are Judges; but the writ is to be directed to the Treasurer and Barons, who have the keeping of the record, &c. See title Error. Under the charge of the government of the Lord Treasurer, is all the King’s wealth contained in the Exchequer; he has the check of all the Officers employed in collecting the customs and royal revenues; all the offices of the customs in all parts of England are in his gift and disposition; escheats in every county are nominated by him; and he makes leases of all the lands belonging to the Crown, &c.

But the high and important post of Lord Treasurer has of late years, like some other great offices, been esteemed too great a task for one person, and been generally executed by Commissioners. See more belonging to this office, Stat. 20 Edw. 3. c. 6. 31 H. 6. c. 5. 4 Edw. 4. c. 1. 4 Inf. 104. If any one kill the Treasurer, being in his place, doing his office, it is High Treason, by stat. 25 Edw. 3. c. 3. See title Treason; Judges.

Besides the Lord Treasurer, there is a Treasurer of the King’s Household, who is of the Privy Council, and with the Comptroller, &c., has great power. A Treasurer of the Navy or War, see stat. 35 Eliz. c. 4. A Treasurer of the King’s Chamber, stat. 35 H. 8. c. 39.

A Treasurer of the Wardrobe, Stat. 25 Edw. 3. c. 21. There are also Treasurers of Corporations, &c.

TREASURER, IN CATHEDRAL CHURCHES. An Officer whose charge was to take care of the vestments, plate, jewels, relics, and other Treasure belonging to the said churches. At the time of the Reformation, the office was extinguished as needless, in most Cathedral Churches; but it is still remaining in those of Salisbury, London, &c.

TREASURER OF THE COUNTY. He that keeps the County flock. There are two of them in each county, chosen by the major part of the Jurisdictions of the Peace, &c., at Easter Sessions; they must have 10l. a year in land, or 150l. in personal estate; and shall not continue in their office above a year; and they are to account yearly at Easter Sessions, or within ten days after, to their successors, under penalties. The County flock, of which this Officer hath the keeping, is raised by rating every parish yearly; and is disposed to charitable uses, for the relief of maidens, Soldiers and Mar­iners, prisoners in the County gaols, paying the salaries of Government of Houses of Correction, and relieving poor Aims, &c. The duty of these Treasurers, with the manner of raising the flock, &c., is particularly specified in the statutes, 43 Eliz. c. 2. 4 Jac. 1. c. 4. § 11, 12, 13, 16. 36. c. 18. 5 Ann. c. 32. 6 Geo. 1. c. 23, &c. See further, titles Poor; Apprentices.

TREASURY, Signifies sometimes the place where the King’s Treasury is deposited, and, at other times, the office of Treasurer. Cowell.

TREASURIES, LEAGUES, AND ALLIANCES; See title King V. 3.

TREBUCHET, TREBUCKET, TRIBUCHE. A Tuinbrel or Cucking-Rood. Also a great engine to cast stones to batter walls. 3 Inf. 219: Matt. Paris 1246: Knighton, An. 1582. See title CuckRepeat.

TREES. The Proprieters of Trees cut down or taken away, how recompensed, and the offenders punished, Stat. 43 Eliz. c. 7. 15 Car. 2. c. 2. § 2. The houses of persons assaulted to have cut or taken them away, to be searched, Stat. 15 Car. 2. c. 2. § 3. Persons destroying Plantations, punished as treepollers, Stat. 22 & 23 Car. 2. c. 7. § 1. 1 Geo. 1. fl. 2. c. 42. 29 Geo. 2. c. 36. § 5. As Felons, Stat. 9 Geo. 1. c. 32. § 1. 1 Geo. 3. c. 33. (third offence). See Larceny I. 1. The neighboring Inhabitants, stat. 1 Geo. 1. fl. 2. c. 48, and the Hundred, answerable for damages, Stat. 9 Geo. 1. c. 22. § 7. 29 Geo. 2. c. 36. § 9. See 20 Flin. Abr. 415—420; and this Dictionary, titles Timber; Miscellany, Maltese.

TREATY, Tractatus.] Fine wheat; mentioned in the Stat. 51 H. 3. 3. See Bread.

TREMBLAIN, TRESUMER, TERSMISUR, TERSMUR. The season or time of sowing Summer corn, being about March, the third month, to which the word may allude; and corn sown in March is called Tresmer, and the same is a Tremendous. Tremendum was the season for Summer corn, barley, oats, beans, &c., opposed to the season for Winter corn, wheat and rye, called Hibernagium; and is thus distinguished in old charters. Cartular. Glaston. MS. 91.


TRENCHE, From Fr. Transier, to cut.] A Carver of meat at a table. In the Patent Rolls, mention is made of a pension granted by the King to A. B. Ant. Trenchinianus, &c.

TRENCHIA, A Trench, or Dike newly cut. Peramb. 33 Hen. 5.

TRENTAL, Tribunals; Fr. Trento. An Office for the Dead, that continued thirty days, or confessing of thirty miseries; from the ital. Trenta, i. e. Trignita. Stat. 1 Edw. 6. c. 14.

TREPEG; See Trebuchet.

TRESAYLE, TRESAYL, TRESAYLI, TRESAYL, TRESAYLI, TRESAYL, TRESAYLI. The name of a Writ, to be sued on outlaw by abatement, on the death of the grandfather’s grandfather; now obsolete. See title Affete of Mort-d’Ancêter.

TRESPASS,
TRESPASS.

TRESPASS. [Any transgression of the Law less than treason, felony, or misprision of either: But it is most confantly used for that wrong, or damage, which is done by one private man to another; or to the King in his forest, &c. In which signification it is of two sorts: Trespass general, otherwise called Trespass vi et armis; and Trespass special, or upon the case. Bax. Tresp.: Beatt. ab. 4.

Trespass, in its largest and most extensive signification, signifies any transgression or offence against the Law of Nature, of Society, or of the Country in which we live; whether it relates to a man's person or his property. Therefore beating another is a Trespass: for which an action of Trespass vi et armis is assailable and actionable. And, in general, any misuse, or act of one man whereby another is injuriously treated or damnsified, is a trespass, or Trespass in its largest signification: for which an action will lie.

3 Comm. c. 12. See titles Action: Assault; Mayhem, &c.

Trespass supposes a wrong to be done with force; and Trespasses against the person of a man are of several kinds, viz. By menacing or threatening to hurt him; assaulting or setting upon one, to beat him; battery being the usual means by which he loses the use of his limbs; by imprisonment, or restraining him of his lawful liberty, &c. Trespasses against a man's property may be committed in divers cases; as against his wife, children, or servants, or his house and goods, &c. and against his land, by carrying away deeds and evidences concerning it, cutting the trees, or spoiling the fruit thereon, &c. F. N. B. 85, 87; Pint 198, 201: 2 Roll. Abr. 545.

Trespass vi et armis, may be brought by him that hath the possession of goods, or of a house, or land, if he be disturbed in his possession; for the disturbance, besides the private damage, is also a breach of the public peace. 1 Inst. 57; 1 Rol. Abr. 572; 2 Id. 596.

It is a limited distinction, that where an act is done which is in itself an immediate injury to another's person or property, there the remedy is usually by an action of Trespass vi et armis: But where there is no act done, but there is only a culpable omission, or where the act is not immediately injurious, but only by consequence and collaterally, there no action of Trespass vi et armis will lie, but an action on the special case for the damages consequent on such omission or act. 11 Mod. 180; 2d. Raym. 1402: Stra. 635; 3 Comm. c. 8, p. 123; c. 12, p. 206. The distinctions in these cases are frequently very delicate. See the subject much confidered in 2 Black. Rep. 892.

Thus it is lawful for a man to make a dam on his own ground; but if, by making it, the water overflows his neighbour's land, an action on the case lies against him. Med. Caf. in L. & E. 275; 1 Strange 634. Trespass lies generally for breaking a man's close: for driving cattle, whereby they die or are injured; taking away pales, and breaking of fences, or of doors or windows of a house; for driving a cart and horses over the ground of another, where there is no way for it; filling in another person's pond, and for breaking the pond; for taking the corn of another with cattle, and diging in any man's coal mines, and carrying away coals; for taking away so much of the plaintiff's money, tearing a bond, &c. 1 Bro. Ab. 338; 1 Saund. 220; 2 Cro. 463; Latch. 144.

Trespass lies for setting the end of a bridge upon another man's soil, though it be a highway, 2 Strange 1004; and for erecting a flail in a market, without agreeing for its hagle. Ibid. 1238.

In Trespass for taking goods, the plaintiff must allege a property in himself; because in such case there may be two intendments, one that they were the defendant's own goods, and then the taking is lawful; and the other that they were the goods of the plaintiff, when the taking will be wrongful: but wherever the contention is indifferent, it shall always be most strong against the plaintiff. 2 Lev. 20: Pint. 36.

A man may have one action of Trespass for several Trespasses: And if divers actions of trespass are brought for one and the same cause, the defendant may get them united in one, if brought to vex him; but the Trespasses must not be of several natures, which may not be tried in one action. Mib. 24. Car. B. R.

In all Trespasses there ought to be a voluntary act, and also a damage; and in detinue and trover, where the thing itself is in demand, it should be particularly named; if Trespass be laid in a declaration for the taking of goods, without expressing the quantity and quality of them, or the value, &c. it is bad upon a general demurrer; though, as to the omission of the value, it hath been held to be good after verdict. Latch. 13: Style 170, 230: Len. 134: Sid. 29.

Trespass good usus & abditi lies not for the father for taking and carrying away any of his children, except for taking of a son or daughter who is heir. Cro. Eliz. 769: A man committed adultery with a woman in Southwark, where they both dwelt, and the woman went to Ratcliff in Middlesex, from whence the man brought her to Richmond in Surrey: the husband brought an action of Trespass de ware rapta & abdita cum huius uiri: and it was a doubt whether, upon the matter given in evidence, the defendant could be found guilty in London; but the jury found him guilty generally, and gave the plaintiff 300l. damages. Dyer 256.

Executors may bring Trespass for goods taken out of their possession, or for goods and chattels taken in the life of the testator: Also administrators shall have it for goods of intestates; and an Ordinary may bring action of Trespass for goods in his own possession to administer as Ordinary, &c. If a man voluntarily take away my goods or cattle, and keep them till I pay him money, on promise that they are his heirs, &c. when they are not so, I may have action of Trespass. Bro. Tres. 354. And if the Sheriff have a writ against the lands and goods of one man, and he be by mistake execute it upon my lands or goods; this action lies against him, and it will be no excuse that the plaintiff or any other informed him they were the goods, &c. of the defendant. Dyer 295: Keb. 119, 129.

If a man hurt my beasts, in ground belonging to me, or some other person; he is liable to action of Trespass. Though the owner of the land wherein cattle are doing this Trespass, may gently by himself, or his dogs, chase them
TRESPASS.

them out, and justify the fame. Bro. Tresp. 421:
8 Rep. 57.

Trespass will not lie against a Ministerial Officer, for any thing done merely in pursuance of his duty; though it is somewhat in support of a wrong, but not a wrong to which he is no way accessory or attendant: As, where a diffence is tortiously taken and impounded, an action will not lie against the pound-keeper. Co. Rep. 476.

Trespass will not lie against the Master or Seaman of a King's ship or privateer, for taking a vessel as prize on the seas; though the capture is afterwards determined to be illegal in the Court of Admiralty; for questions of prize, or not prize, belong exclusively to that Court; which gives damages for the detention. Ross v. Hafiard, Doug. 580: See 1 Lev. 243: Sid. 267: Lindo v. Rodney, Doug. 501.

With respect to Officers in the Exchequer and Customs, various Acts of Parliament have been made to protect them in the exercise of their duty; that they might not be harassed with actions of Trespass, where they have acted bona fide. See particularly, statutes 6 Geo. 1. c. 21: 19 Geo. 2. c. 34: and 1 & 2 Will. 3. c. 9.

A Court, which is not a Court of Record, cannot hold plea of Trespass cu et arms. F. N. B. 86. 190. Trespass quasi vo et armis clamian fregit was brought, wherein the plaintiff laid damage to the value of 20l. and the defendant demurred for that cause, alleging that B. R. could have no cognizance of Common Law, or by the statute of Gloucester, to hold plea in action where the damages are under 40l. But it was adjudged, that Trespass quasi vo et armis will lie in this Court, be the damages what they will. 3 Mod. 275.

At Common Law, in Trespass vo et armis, if the defendant was convicted, he was to be fined and imprisoned; but in other Trespasses only arrested. 17 & 18 Geo. 2. 152. In action of Trespass against two persons for carrying away goods, &c., one being judgment by default, and the other justified under a licence from the plaintiff, and has a verdict: this goes to the whole, and judgment shall be arrested as to the other defendant. 4 Lev. 25.

1375. 1374.

Trespass in a limited and confined sense, as related to land, signifies no more than an entry on another man's ground without a lawful authority; and doing some damage, however inconsiderable, to his real property. For the right of meum and tuum, or property, in lands being once established, it follows as a necessary consequence, that this right must be exclusive; that is, that the owner may retain to himself the sole use and occupation of his soil: every entry, therefore, therein, without the owner's leave, and especially if contrary to his express order, is a Trespass or trespassion; for satisfaction of which an action of Trespass will lie; but the quantum of that satisfaction is to be determined by considering how far the offence was wilful or inadvertent, and by estimating the value of the actual damage sustained. 3 Comm. c. 12.

Every unwarrantable entry on another's soil, the Law entitles a Trespass by breaking his close; the words of the writ of Trespass commanding the defendant to shew caule quasi clamian quaerit fregit. For every man's land is in the eye of the Law included and set apart from his neighbour's: in that either by a visible and material fence, as one field is divided from another by a hedge; or, by an ideal, invisible boundary, existing only in the contemplation of Law, as when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other: for, if no other special loss can be ascribed, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage. F. N. B. 87, 88.

One must have a property (either absolute or temporary) in the soil, and actual possession by entry, to be able to maintain an action of Trespass: or, at least, it is requisite that the party have a safe and peaceable possession of the soil and herbage of the land. Dyre 18s: 2 Roll. Atr. 549: Mo. 456. Thus, if a meadow be divided annually among the parishioners by lot, then, when each person's several portion is allotted, they may be respectively capable of maintaining an action for the breach of their several cloths; for they have an exclusive interest and freehold therein for the time. Cro. Eliz. 421. But, before entry and actual possession, one cannot maintain an action of Trespass, though he hath the freehold in law. 2 Roll. Atr. 555. And therefore an heir before entry cannot have this action against an abator: though a defendant might have it against the abator, for the injury done by the aburator itself, at which time the plaintiff was seized of the land; but he cannot have it for any act done after the seizure, until he have gained possession by re-entry, and then he may well maintain it for the intermediate damage done; for, after his re-entry, the Law, by a kind of jus possessantis, supposes the freehold to have all along continued in him. 1 Rep. 5. Neither, by the Common Law, in case of an intrusion or forceful entry, could the party kept out of possession sue the wrong-doer, by a mode of redress, which was calculated merely for injuries committed against the land while in the possession of the owner. But now, by the 6 Ann. c. 18, if a guardian or trustee for any infant, a husband seized jure uxoris, or a person having any estate or interest determinable upon a life or lives, shall, after the determination of their respective interests, hold over and continue in possession of the lands or tenements, without the consent of the person entitled thereto, they are adjudged to be Trespassers. See also the flavs. 4 Geo. 2. c. 283: 11 Geo. 2. c. 19, as to tenants for years, &c., holding over; and this Dictionary, titles Succession; Rent; Distresses, &c.

He that is possessed of lands, though he hath no good title, shall have the action for a Trespass against one who hath no right to the lands; but not against him that hath right. Plowd. 431. 446: 3 Keb. 165. The lease for years, after his lease is expired, may have action for a Trespass on the land before his lease was ended. Bro. Tresp. 436. An action of Trespass was brought by the Lord of a manor, for Trespass done in the highway, by a tenant's beast breaking out of his close into the walle; and it was adjudged it would not lie. 1 Bull. 157.—The reason of this determination seems to be, that the loco was a highway, and the cattle had not eaten therein: but that Trespass by the Lord of a manor, as owner of the soil, will lie, is indisputable. See 3 Burr. 1824.

If A. is bound to fence his close against B., and he against C. a neighbour; and neither of them include against one another, so that the beams of C. for want of inclofore go out of the ground to that of B. and thence
to A.'s ground: In this case A. shall have Trespass against E., for he is bound only to fence against B., and every one ought to keep his cattle as well in open ground, not inclosed, as in several grounds where there is inclosure. 3 Salk. 306. Jevs. Gent. 161.

One drives my cattle into another man's land, I may go on the land and catch them out: yet by this I am a Trespasser to the owner of the ground, and he may have his action against me for it, and I must take my counter-remedy against him that drove them in. 21 H. 7. 27: 2 Rep. 14. If another man have a horse, or other goods in my house or ground, and he enter to take it away, without my leave, action of Trespass lies against him: But if I drive the cattle or carry the goods of another into my land, he may come upon the land and take them, and no action lieth. 4 Stew. Abr. 135, 136.

A man is answerable for not only his own Trespass, but that of his cattle also; for, if by his negligent keeping they stray upon the land of another, and much more if he permits, or drives them on, they there tread down his neighbour's herbage, and spoil his corn or his trees, this is a Trespass for which the owner must answer in damages. And the Law gives the party injured a double remedy in this case; by permitting him to drive the cattle, or other goods, that may spoil his herbage, and do damage to him, as such a Trespass as the Act of the 28 Geo. 3, c. 366, sec. 1, makes the party injured a Trespass for entering upon the land of another, and doing damage thereto, or doing damage to him, or spoiling his herbage, as such a Trespass as the Act of the 28 Geo. 3, c. 366, sec. 1, makes the party injured a Trespass for entering upon the land of another, and doing damage thereto, or doing damage to him, or spoiling his herbage, as such a Trespass as the Act of the 28 Geo. 3, c. 366, sec. 1, makes the party injured a Trespass for entering upon the land of another, and doing damage thereto, or doing damage to him, or spoiling his herbage. In some cases Trespass is justifiable; or, rather, entry of Trespass on the part of the plaintiff may answer that part of the plea by a traverse, and give a new affidavit as to the rest. 3 Comn. c. 12.

In Trespasses of a permanent nature, where the injury is continually renewed, (as by spoiling or confining the herbage with the defendant's cattle,) the declaration may allege the injury to have been committed by continuance from one given day to another; (which is called laying the action with a continuance,) and the plaintiff shall not be compelled to bring separate actions for every day's separate offence. 2 Robl. 455: Lord Rimg. 140. But where the Trespass is by one or several acts, each of which terminates in itself, and being once done cannot be done again, it cannot be laid with a continuance; yet if there be repeated acts of Trespass committed, (as cutting down a certain number of trees,) they may be laid to be done, not continually, but at divers days and times within a given period. 3 Salk. 638, 453; 4 Salk. 843; 7 Mod. 152.

Things must lie in continuance, and not terminate in themselves, or a continuance will not be good: And where a Trespass is alleged with a continuance, that cannot be continued, the evidence ought only to be to the first act. 2 Salk. 635, 453.

The best way to declare for such Trespasses which lie in continuance, is for the plaintiff to set forth in his de-

claration that the defendant, between such a day and such a day, cut several trees, &c. and not to lay a continuance transferreBis from such a day to such a day; and upon such declaration, the plaintiff may give in evidence a cutting on any day within those days. 3 Salk. 306.

If the defendant makes the place where the Trespass was done material by his plea, he must shew it with great certainty; but if it be a Trespass quare clausum friget in S, and the defendant pleads that the place where is his freehold, which is the common bar in this case, so justificeth as in his freehold, &c. if issue be taken thereon, the defendant may give in evidence any clofe in which he hath a freehold; though if the plaintiff had replied and given the clofe a name, defendant must have a freehold in that very clofe. 2 Salk. 455; Cawthorn's Rep. 176.

A plaintiff may make a new affidavit of the place where, &c. and then the defendant may vary from his first justification: As for instance, an action of Trespass assigned to be done generally in D., the defendant justified the taking damage-feasient; and the plaintiff in his replication made a new affidavit, upon which the defendant justified for a heriot; and it was adjudged good. More 590. The defendant in his plea may put the plaintiff to the new affidavit; and every new affidavit is a new declaration, to which the defendant is to give a new answer, and he may not traverse it, but mult either plead or demur; yet where Trespasses are alleged to be done in several places, and the defendant pleads to force, and agrees to the places wherein the plaintiff alleged the Trespasses to be done, there the plaintiff may answer that part of the plea by a traverse, and make an affidavit as to the rest. 4 Term. Rep. 503.

As Trespass quare clausum friget is a local action, Trespass for breaking and entering a house in Canada in America, will not lie in this country, 4 Term. Rep. 503.

In some cases Trespass is justifiable; or, rather, entry on another's land or house shall not in those cases be accounted Trespass: as if a man comes thither to demand or pay money, there payable; or to execute, in a legal manner, the processes of the Law. Also a man may justify entering into an inn or public house, without the leave of the owner first specially asked; because, when a man professes the keeping of such inn or public house, he thereby gives a general licence to any person to enter his doors. See title Innis. So a landlord may justify entering to dine for rent; a commoner to attend his cattle, commoning on another's land; and a reveller, to see if any wife be committed on the estate; for the apparent necessity of the thing. 3 Rep. 456. Also it hath been said, that, by the Common Law and custom of England, the poor are allowed to enter and glean upon another's ground after the harvest, without being guilty of Trespass; but modern determinations have denied this right. See this Dictionary, title Glanage. — The Common Law warrants the keeping of ravenous beasts of prey, as badgers and foxes, in another man's lands, because the destroying such creatures is said to be profitable to the Public. 3 Salk. 321. See title Game Laws. But
But in cases where a man midmeaneth himself, or makes an ill use of the authority with which the Law entitles him, he shall be accounted a Trespasser ab initio; as if one comes into a tavern and will not go out in a reasonable time, but tarries there all night, contrary to the inclinations of the owner; this wrongful act shall affect and have relation back even to his first entry, and make the whole a Trespass. Finch L. 47; Cre. Juc. 458; 2 Roll. Abr. 561. But a bare non-feasance, as not paying for the wine he calls for, will not make him a Trespasser; for this is only a breach of contract, for which the taverner shall have an action of debt: or affirmavit against him. 8 Rep. 147. So, if a landlord diluted for rent, and wilfully killed the distises, this, by the Common Law, made him a Trespasser ab initio; and so indeed would any other irregularity have done, till the suit.

11 Geo. 2. c. 19. See Finch L. 47; and his Dictionary, title Distises. But still, if a Reverend Man, who enters on pretence of selling wafe, breaks the house, or flays there all night; or if the commoner, who comes to tend his cattle, was down a tree; in these and similar cases the Law judges that he entered for this unlawful purpose; and therefore, as the act which demonstrates such his purpose, made him a Trespasser ab initio. 8 Rep. 146. So also, in the case of hunting the fox or the badger, a man cannot justify breaking the fall, and digging him out of his earth; for though the Law warrants the hunting of such noxious animals for the public good, yet it is held that such things must be done in an ordinary and usual manner; therefore, as there is an ordinary course to kill them, viz. by hunting, the Court held that the digging for them was unlawful. Cre. Juc. 321. See title Game-Laws.

A man may also justify in an action of Trespass, on account of the freehold and right of entry being in himself; and this defence brings the title of the estate in question. This is therefore one of the ways devised, since the duole of real actions, to try the property of estates; though it is not so unusual as that by Ejectment, because that, being now a mixed action, not only gives damages for the ejectment, but also possession of the land; whereas in Trespass, which is merely a personal fut, the right can be affirmed, but no possession delivered; nothing being recovered but damages for the wrong committed. 3 Comm. c. 12. See title Ejectment.

One justification in Trespass also arises from the leave or licence of the party complaining: and as to this the following has been said as the difference:

There is difference between a positive abuse of an authority or licence in fact, and of an authority or licence in Law. The reason of this difference is in one book said to be, that the abuse in the latter case is deemed a Trespass with force ab initio; because the Law intends from the subsequent tortuous act, that there was from the beginning a design to be guilty thereof. 8 Rep. 146. The Six Carpenter's case.

But this reason, which equally applies to both cases, is by no means conclusive; for it may be as well intended in the former case, from the subsequent tortuous act, that there was from the beginning a design of being guilty thereof. Perhaps the difference between the two cases may be better accounted for in the following manner: In the one, where the Law has given an authority or li-

ence, it seems reasonable, that the same law should, in order to secure the persons, who are without their direct assent made the objects thereof, from all positive abuses of such authority or licence, or whenever either of these is positively abused, make the same void from the beginning; and leave the abuser thereof in the same situation, as if he had acted without any authority or licence. And this agrees perfectly with the maxim, Actio legum non est ejectio. But in the other case, where a man, who was under no necessity of giving an authority or licence to any person, has thought proper to give one of these to a certain person, who is afterwards guilty of a positive abuse thereof, there is no reason that the Law should interfere, and make all that has been done, under the authority or licence by him to voluntarily given, void from the beginning; because it was his own folly to place a confidence in a man, who was not fit to be trusted. 5 New Abr. 156.

In order to prevent trifling and vexatious actions of Trespass, as well as other personal actions, it is (inter alia) enacted, by stat. 43 Eliz. c. 61; 22 Ed. W. C. 2. 9; § 136, that where the jury, who try an action of Trespass, give less damages than 40s. the plaintiff shall be allowed no more costs, than according to the Judge shall certify under his hand, that the freehold or title of the land came chiefly in question. But this rule now admits of two exceptions more, which have been made by subsequent statutes: One is by stat. 3 & 5 W. J. c. 14, which enacted, that in all Actions of Trespass, wherein it shall appear that the Trespass was wilful and malicious, and it be so certified by the Judge, the plaintiff shall recover full costs. Every Trespass is wilful, where the defendant has notice, and is especially forewarned not to come on the land; as every Trespass is malicious, though the damage may not amount to forty shillings, where the intent of the defendant plainly appears to be, to harass and distress the plaintiff; as in cases of sportmen warned to go off, or not to come again on another's land. Esp. N.P. 425. The other exception is by stat. 3 & 5 W. & M. c. 25, which gives full costs against any inferior tradesman, apprenice, or other disolute person, who is convicted of a Trespass in hunting, wounding, killing, or damaging, any of another's land; and these costs such inferior tradesman is liable to in case of such Trespass, whatever qualification he may have in point of estate. Ld. Raym. 149; 3 Comm. c. 12. See this Dist. titles Costs; Game-Laws.

If the defendant, in Trespass quare clausum frigid, decline any title to the land, and the Trespass is involuntary, or by negligence, he may be admitted to plead a disclaimer and tender of amends before the action brought; &c. And if it be found for the defendant, the plaintiff shall be barred. Stat. 21 Jac. c. 16. See title Tender.

See further on this subject Espnasti Nis. Prior, Ch. 3. TRESPASSANTS, Fr. I is used by Britton, c. 29, for passengers.

TRESPASSER, One who commits a Trespass. See title Trespass.

TRESPORARE, To turn or divest another way; Tresporare = to turn the road. Cowell.

TRESYS, Fr. Taken out or withdrawn, applied to a Juror removed or discharged. F. N. B. 159.
TRIAL

TRIAL.

TRIAL. [The examination of a cause, civil or criminal, before a Judge who has jurisdiction of it, according to the Laws of the Land. 1 Inst. 124; Finch's L. 36.

I. Of the Course of Trial, in Civil Causes.

II. In Criminal Causes.

III. Of New Trials.

I. Trial is the examination of the matter of fact in issue; of which there are many different species, according to the subject of the cause to be tried: As, for example, Trial by Record; by Inspection, or Examination; by Certificate; by Witness; by Wager of Battle; by Wager of Law; and by Jury.

The first five of these species of Trial are only had in certain special and eccentrical causes, where the Trial by the Court, or by the Judge, would not be so proper or effectual. See this Dictionary, p. 124; Finch's L. 36.

In a Trial by Witnesses, per leges, without the intervention of a Jury, is the only method of Trial known to the Civil Law; in which the Judge is left to form, in his own breast, his sentence, upon the credit of the witnesses examined: But it is very rarely used in our Law, which prefers the Trial by Jury before it, in almost every instance. Save only, that when a Widow brings a Writ of Dower, and the Tenant pleads that the Husband is not dead; this being looked upon as a statutory plea, it, in favour of the Widow, and for greater expedition, allowed to be tried by Witnesses examined before the Judges; And so, in fact Finch, shall no other case in our Law. But Cape mentions some others; as, to try whether the Tenant in a real action was duly summoned, or the validity of a challenge to a Juror; so that Finch's observation must be confined to the Trial of dower, and not collateral issues. And in every case Cape lays it down, that the affirmative must be proved by two witnesses at the least. 1 Inst. 6. 3 Comm. c. 22.

For the proceedings on the Trial in Civil Causes by Jury, as relate to the summoning and appearance of the Jury, see this Dist. title Jury and. Also titles Affidavit, Judicature.

Trials by the Court are at Bar, or Nisi Prius.

Trials at Bar are those which take place before all the Judges, at the Bar of the Court in which the action is brought. Before the bar, Wilms. 2. 13 Ed. 1; 16. Civil Causes were tried either at the Bar of the Court, or, when of no great moment, before the Justices in Eyre; a practice having very early obtained, of continuing the cause from Term to Term, in the Court above, provided the Justices in Eyre did not previously come into the county where the cause of action arose; and if it happened that they arrived there within that interval, then the cause was removed from the jurisdiction of the Justices at Westminster to that of the Justices in Eyre. See title Jury. Afterwards, when the Justices in Eyre were superseded by the modern Justices of Assize, it was enacted by the above statute, "that injunctions to be taken of trespasses pleaded before the Justices of either Bench, shall be determined before the Justices of Assize, unless the trespass be so heinous that it requires another term."
T R I A L I.

where lands lie in Middlesex; and it is never allowed in an issuable Term, unless the Crown be concerned in interest, or under very particular and pressing circumstances. In Easter Term, they did not formerly allow more than ten Trials at Bar; and they must have been brought on a fortnight at least before the end of it, to allow sufficient time for the other business of the Court. Tidd's Pract.

Anciently, there was no other notice given of such Trial, than the rule in the office; but now there must be 14 days' notice. The plaintiff, however, as in other cases, may countermand his notice, and prevent the cause from being tried at the day appointed; after which, it cannot be brought to Trial again, unless some new day be appointed by the Court. And it is said, that a second rule cannot be made for a Trial at Bar, between the same parties, in the same Term. Previous to giving notice, the day appointed for the Trial must be entered with the Clerk of the Papers; and it could not formerly have been on a Saturday, or the last Paper Day in Term, except in the King's case. Tidd's Pract.

A Trial at Bar is had upon the Venire Facias or Distraint, &c. as at Common Law, without any clause of Nisi Prius; and it is most by a Special Jury of the county where the cause is laid. But it may be had, by consent, by a Jury of a different county; and in Wilt or Berwick upon Tweed, &c. or where an impartial Trial cannot be had, the Jury must come from the next English or adjoining county, where the King's writ of Venire runs. Six days' notice at least ought to be given to the Jurors before the Trial; and if a sufficient number do not attend to make a Jury, the Trial must be adjourned, and a demur or Nisi Prius awarded, as at Common Law; for the parties in this case cannot pray a Tales upon the statutes. See title Jury. And no writ of alias or pluralis Distraint, with a Tales, for the Trial of Issues at the Bar, shall be sued out, before the precedent writ of Distraint, with a Panel of the names of the Jury annexed, shall be delivered to the Secondy of the Court, to the intent that the Issues, after the Jury for not appearing upon the precedent writ, may be duly effectual. After a Trial at Bar, if the parties be dissatisfied with the verdict, they may move for a new Trial, as in other cases. Tidd's Pract. and authorities there cited.

Trials at nisi prius are always had in the county where the venue is laid, and where the fact was or is supposed to have been committed; except where the Venue is laid in Wilt or Berwick upon Tweed, &c. or in a county where an impartial Trial cannot be held; in which cases the cause shall be tried in the next English or adjoining county, where the King's writ of Venire runs. Tidd's Pract. See title Venue.

When the Day of Trial is fixed, the plaintiff or his attorney must bring down the Record to the Allies, and enter it with the proper Officer, (the Clerk of the Papers,) in order to its being called on in course. If it be not so entered, it cannot be tried; therefore it is in the plaintiff's break to delay any Trial by not carrying down the Record; unless the defendant, being fearful of such neglect in the plaintiff, and willing to discharge himself from the action, will himself undertake to bring on the Trial, giving proper notice to the plaintiff. Which proceeding is called the Trial by Prevoys; by reason of the clause then inserted in the Sheriff's Venire, viz. "Prevoys, provided that if two writs come to your hands, (that is, one from the plaintiff and another from the defendant,) you shall execute only one of them." But this practice hath been diffused, since the Stat 14 Geo. 2. c. 17, which enacts, that if, after issue joined, the cause is not carried down to be tried according to the course of the Court, the plaintiff shall be at liberty to be proceeded against, and judgment shall be given for the defendant as in a case of a nonsuit. See title Nonsuit.

In case the plaintiff intends to try the cause, he is bound to give the defendant (if he lives within forty miles of London) eight days' notice of Trial; and, if he lives at a greater distance, then fourteen days' notice, in order to prevent surprize: And if the plaintiff then changes his mind, and does not countermand the notice, six days before the Trial, he shall be liable to pay costs to the defendant for not proceeding to Trial, by the same last-mentioned statute. The defendant, however, or plaintiff, may, upon good cause shewn to the Court above, as upon absence or sickness of a material witness, obtain leave upon motion to defer the Trial of the cause till the next Assizes. 3 Camp. c. 23.

The Stat 14 Geo. 2. c. 17, only requires ten days' notice of Trial; but at the Sittings in London and Westminster, the former practice of fourteen days' notice was still continued. But in all country causes, ten days' notice is sufficient. As where the Commission-Day is on the fifteenth of any month, notice of Trial must be given on or before the fifth. See Tidd's Pract. If the defendant resides within forty miles of London, and if the cause is to be tried at the Sittings in London or Westminster, then two days' notice of countermand, before it is to be tried, is sufficient. Sellon's Pract.

Where there have been no proceedings within four Terms, a full Term's notice must be given previous to the Allies or Sittings; unless the cause has been delayed by the defendant himself, by an injunction or other means. Sellon's Pract. 2 Black. Rep. 784: 3 Term Rep. 530. If the defendant proceed to Trial by Prevoys, he must give the same notice as would have been required from the plaintiff. Sellon's Pract. Sometimes the Courts impose it as a condition upon the defendant, that he shall accept short notice of Trial; which, in country causes, shall be given at least four days before the Commission-Day, one day being exclusive, and the other includive. 3 Term Rep. 660. But in town causes, two days' notice seems sufficient in such a case. Tidd's Pract.

The old rule for entering causes to London and Middlesex was, that unless they were entered with the Chief Justice, two days before the Sittings upon which they were to be tried, the Marshal might enter a ne recipiantur, at the request of the defendant or his attorney. And this rule still holds, with regard to Trials at the Sittings in Term. But if a cause was to be tried at the Sittings, after Term, no ne recipiantur could be entered, until after Proclamation made, by order of the Chief Justice, for bringing in the record; and then, if the record was not brought in, the defendant's attorney might enter a ne recipiantur. Tidd's Pract.

At present, the practice with regard to entering causes for Trial, at the Sittings after Term or Allies, stands thus: In Middlesex, no record or writ of Nisi Prius will be received, at any Sitting after Term, unless the same shall
The is gone through, the Advocate on the of the pleadings Coun other is opening Counfel transfaCted which holds the facts continuance the upon that fide which merits, Jury being completed, of the cafe, and a proper according with the names of the Bar of the Court, or before the Judge at Special-Sjury caufes are appointed for particular days; stood over from former out to there is reafonable caufe to the cootrary; who thereupon And both in record of the Court, on the fecond day after the Commifiion-Day, otherwife they fhall not be received. delivered to and entered with the Marfhal, before The caufe being entered, fiands ready for Trial, at

TRIAL I.

shall be delivered to and entered with the Marshal, within two days after the laft day of every Term; and in London, no record of Nifi Prius will be received, and any Sitting after Term, unless the fame shall be delivered to and entered with the Marshal, the day before the day to which the Sittings in London shall be adjourned, by nine in the evening. At the Affiles, the writ and record are entered together; and no writ and record of Nifi Prius shall be received, in any county in England, unless they shall be delivered to and entered with the Marshal, before the firft Sitting of the Court, after the Commiffion-Day, except in the counties of York and Northumberland, and there the writs and records shall be delivered to and entered with the Marshal, before the firft Sitting of the Court, on the second day after the Commiffion-Day, otherwise they shall not be received. And both in London and Middlesex, as well as at the Affiles, every caufe shall be tried in the order in which it is entered, beginning with romanfs, (thofe which have fled over from former Sittings.) unless it fhall be made out to the fatisfaction of the Judge, in open Court, that there is reafonable caufe to the contrary; who the upon may make fuch order for the Trial of the caufe, to be put off, as to him fhall feem juft. Rule Hid. 14, Geo. 2. Special-Jury caufes are appointed for particular days; and in London and Middlesex no caufe can be tried by a Special jury, unlefs the rule for fuch Jury be drawn up, and the caufe marked as a Special Jury, in the Marshall's book of Caufes, before the Adjournment-Day after each Term. Rule Trin. 50 Geo. 3.

The caufe being entered, stands ready for Trial, at the Bar of the Court, or before the Judge at Nifi Prius; and previous to its coming on, a Brief should be prepared for each party, and delivered to Counfel; containing a short abfair of the pleadings, a clear statement of the cafe, and a proper arrangement of the proofs, with the names of the witnefes. The grand rule to be observed in drawing Briefs, confifts in concifefs with perfeoticy. Tidd's Prat, K. B.; Selon's Prat.

When the caufe is called on in Court, in its turn, according to a list or paper, made out of the order in which the several caufes are entered for hearing; by the Atorneys in each caufe, the Record is handed to the judge to perufe and observe the pleadings, and what infers the parties are to maintain and prove. If no pleas gui devoir continuance (fee tide Pleading I. 3) intervene, the Jury being completed, sworn, and ready to hear the merits, in order to fix their attention the clofer to the fads which they are impanelled and sworn, to try the pleadings opened to them by Counfel on that fide which holds the affirmative of the queftion in ifue. For the ifue is laid to lie, and proof is alwaies first required, upon that fide which affirms the matter in queftion. The opening Counfel briefly informs them what has been transferr'd in the Court above; the parties, the nature of the action, the declaration, the pleas, replication, and other proceedings; and laftly, upon what point the ifue is joined, which is there lent down to be determined. Instead of which, formerly, the whole record and proceed of the pleadings was read to them in Eng;ish by the Court, and the matter in ifue clearly explained to their capacities. The nature of the cafe, and the evidence intended to be produced, are next laid before them by Counfel also on the fame fide; and, when their evidence is gone through, the Advocate on the other fide opens the adverfe cafe, and supports it by evidence; and then the party which began is heard by way of reply, 3 Conn. c. 21.

As to the nature of the Evidence at the Trial, fee this Dictionary, titles Evidence; Jury III.

When the Evidence is gone through on both fides, the Judge, in the prefence of the parties, the Counfel, and all others, fums up the whole to the Jury; omitting all fuperfluous circumstances, obferving wherein the main queftion and principal ifue lies, laying what evidence has been given to support it, with fuch remarks as he thinks neccessary for their direction, and giving them their opinion in matters of Law arising upon that evidence: The Jury then (unless the caufe be very clear) withdraw from the Bar to consider of their verdict; and when they are unanimously agreed, return, and before they deliver their verdict, the plaintiff is bound to appear in Court, by himself, Attorney, or Counfel, in order to anfwer the amercement to which by the old Law he is liable, in cafe he fails in his fuit, as a punishment for his file claim. To be anmerced, or a muere, is to be at the King's muery with regard to the fine to be impofed; its mistreatment, Domino Regis pro falsa clamore fum. The amercement is difputed, but the term still continues; and if the plaintiff does not appear, no verdict can be given, but the plaintiff is faid to be nonfuit, non occurrat clamorem faum. Therefore it is ufual for a plaintiff, when he or his Counfel perceives that he has not given evidence sufficient to maintain his ifue, to be voluntarily nonfuit, or withdraw himfelf; whereupon the Crier is ordered to call the plaintiff, and if neither he, nor any body for him, appears, he is nonfuit, the Jurors are discharged, the action is at an end, and the defendant shall recover his colts. The reafon of this practice is, that a nonfuit is more eligible for the plaintiff, than a verdic against him. See tide Nonfuit; and further, title Jury III.

When a verdic will carry all the colts, and it is doubt ful, from the evidence, for which party it will be given, and the action is trivial, though founded in right Law, it is a common practice for the Judge to recommend, and the parties to content, that a Jury should be employed; And thus no verdic is given, and each party pays his own colts.

If the plaintiff appears, the Clerk asks the Jury who they find for? and if for the plaintiff, what damages? The Jury naming the fum, and what colts, or pronouncing for the defendant, the Associate enters the verdic on the back of the panel of the Jurors' names, and repeats it to the Jury, which fulfills the Trial.—The Verdic, Nonfuit, or whatever else paffes at the Trial, is entered on the back of the Record of Nifi Prius; which entry, from the Latin word it began with, is called the Poffea; the suffi:ience of which is, that poftae. Afterwards, the faid plaintiff and defendant appeared by their Atorneys at the place of Trial, and a Jury being sworn, found such a Verdic; or as the case may happen. This, being added to the roll, is returned to the Court from which it was fent, and the history of the caufe is thus continued. See titles Pleading; Practice; Record.

When the caufe is tried at the Sittings in London or Middlesex, the Associate in the Court of K. B. delivers the record to the party for whom the verdic is given; and he afterwards indorses the Poffea, from the Associate's Minutes, on the Panel: But when the caufe is tried at the Affiles, the Associate keeps the record till the next Term, and then delivers it, with the Poffea.
indorsed thereon, to the party obtaining the verdict. On a motion for a new Trial, the Petition was brought into Court, and after the new Trial had been denied, the Petition could not be found; and the Court, on debate, ordered a new one to be made out, from the record above, and the Associate's notes. If the Petition be wrong, it may be amended by the Plea-roll, by the memory or notes of the Judge, or by the notes of the Associate or Clerk of Aliene. Trial; Prac. K. B.; and see Selion's Prac. After these proceedings, the party entitled to enter up his Judgment; for which a certain period is allowed, and, of which notice must be given to the opposite party by a rule of Court; And within the time allowed by that rule, motion must be made for a New Trial, (see pgl. III.) or in arrest of Judgment, &c. See titles: Judgment; Practice; Motion, &c.

Many deferred ulologies are belloved on this mode of Trial by Jury, in the Commentaries; where also some defects in it are foggeled; as, the want of a complete discovery by the oath of the parties; the want of power to examine witnesses abroad; or to compel the production of books and papers belonging to the parties; and the prejudices or inconveniences arising from the locality of Trial and jurisdiction. — All, or most of these defects are, however, generally remedied in practice: And, on the whole, this mode of decision will be found (with all its unavoidable imperfections) the best criterion for investigating the truth of facts ever established in any country. See 3 Comm. c. 27.

Selion of a house in the East Indies is not triable here. 1 Strange 546. In covertant the action was laid in London, and the issue joined upon a sequestration in Oxfordshire, of lands in that county, and the cause was tried in London; after verdict it was objected that the Trial ought to have been in Oxfordshire; but resolved, that by the Nat. 17 Car. 2, it was well tried in the county where the action was brought: But though the words of that statute are, that it shall be good, if tried by the county where the action is laid, it hath been adjudged, that must be understood of a Trial by the county where the matter in issue doth arise; for otherwise it would destroy the whole Law concerning Trials by Juries. 3 Salk. 364. See this Dict. titles Action; Venue; Indictment, &c.

II. The several methods of Trial and Conviction of Offenders, established by the Laws of England, were formerly more numerous than at present; and among them were reckoned the Trial by Ordeal; by Conflag; and by Battel. See this Dictionary, under those titles.

The Trial of Peers, in cases of Treason and Felony, or Misprision of either, is by the Peers of Great Britain, in the Court of Parliament, or the Court of the Lord High Steward, when a Peer is indicted: For in case of Appeal, and all other criminal prosecutions therein, for the offences above mentioned, they are tried like Commoners by a Jury. 9 Rep. 30: 3 Inf. 50: 2 Inf. 49. See this Dictionary, titles Appeal; Peers IV.

The Trial by Jury, or the Country, per patriam, is also that Trial by the Peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the Great Charter.

As to the mode of proceeding and giving the verdict, in the Trial of Criminal Cases, see, in general, titles Jury IV. 1. Evidence (Intro.); Treason V.

The following summary will give a general idea of the nature of Trials in Criminal Cases:

The bill of indictment against an offender, having been prepared; the party prosector and others being bound over to give evidence, the Grand Jury having found the Bill; the prisoner is brought to the bar of the Court; and the Clerk, or Clerk of the Arraigns, says to him, "A. B. hold up thy hand: Thou standest indicted by the name of A. B. for such a felony, &c. (repeating the crime laid in the indictment); How sayest thou, art thou guilty of this felony, &c. wherefore thou standest indicted, or Not Guilty?" To which the prisoner answers, "Not Guilty." Whereupon the Clerk of the Peace says, "Culpit. (see title Pleading II.) How wilt thou be tried?" And the offender answers, "By God and my Country."

This was formerly a very significant question and answer, when there were Trials by Battle, and by Ordeal, as well as by jury; and when the offender answered the question, "By God and his Country," it was thought that he should proceed to be tried by a Jury: But now there is no other way of Trial of Criminals. Bristow's Dict.

When the prisoner has pleaded Not Guilty, (which is the common plea,) it is to be recorded; and then the Petit Jury are called upon the panel, and a full Jury appearing, the prisoner is told they are to pass upon his life and death, and that he may challenge any of them as they come to the book to be sworn, and before they are sworn; for not being indifferent, but partial, or other defect, &c. Then the Jury are sworn, well and truly to try the prisoner, and to bring in a true verdict. This being done, the indictment is recited, and the Jury are acquainted with the particular crimes of which the prisoner stands indicted; and the Clerk of the Peace, addressing the Jury, states the crime laid in the indictment; and adds, "To which indictment he hath pleaded Not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are: So that you (the Jury) are to inquire whether he be guilty of the felony, &c. whereas he stands indicted, or not? If you find him Guilty, you are to make inquiry into what goods and chattels he had at the time that the said felony, &c. was committed, and any thing since: And if you find him Not Guilty, you shall inquire whether he did fly for it; and if he fled for it, what goods, &c. he had at the time of his flight; but if you find him Not Guilty, and that he did not fly, you shall then say no more." Then the Clerk of the Peace swear the witnesses to give true evidence; to speak the whole truth, and nothing but the truth; and when the evidence is given to the Jury concerning the prisoner, the Jury (if they go out of the Court to consider of their verdict) are to be kept in a room, by a sworn Bailiff appointed, without meat, drink, fire, or candle, and without any persons speaking to them, till they bring in their verdict. See titles Jury IV. All things being given in charge, the Jury go to their room, and consider of the matter; when they are all agreed, and returned within or near the bar, the prisoner is brought forth, and the Jury are called over; who all appearing, and the prisoner being set to the bar, the Clerk of the Peace says to them, "Look upon the prisoner, you Gentlemen of the Jury; How say you, is A. B. Guilty of the felony, &c. of which he stands indicted, or Not Guilty?" If the Jury say Not Guilty, it is recorded, and the prisoner taken away; if they say Guilty, the Clerk of
of the Peace says, Gentlemen of the Jury, hearken to your verdict as the Court hath recorded it; You say A. B. is Guilty of the felony, &c. whereas he stands indicted? To which they answer Yes? Then proclamation is made for all persons to keep silence, on which the prisoner is set to the bar, and sentence passed upon him; after which an order or warrant is made for his execution. - Though this part of passing sentence only takes place immediately, in cases of Murder; the felons being all brought up together, at the end of the Sessions, to receive their several sentences.

It is not customary nor agreeable to the general course of proceedings, (unless by consent of parties, or where the defendant is actually in gaol,) to try persons, indicted for misdemeanors, at the same Court in which they have pleaded Not Guilty, or traversed the indictment. But they usually give security to the Court to appear at the next Assizes or Sessions, and then and there to try the trial, giving notice to the Prosecutor of the same. 4 Comm. c. 27. p. 351.

Every defendant, indicted for a misdemeanor, should give full eight days' notice of Trial to the prosecutor, before the Assizes, if the Trial is to be there; it at the Sessions, it is usual to give two or three days' notice: Or the Justices at Sessions fix, as a general rule, what time they think a reasonable notice in such cases, Cro. Circ. Comp. 171. 48.

When the Jury is sworn, if it be a case of any consequence, the indictment is usually opened, and the evidence marshalled, examined, and enforced by the Counsel for the Crown or Prosecution. But it is a settled rule at Common Laws, that no Counsel shall be allowed a prisoner upon his Trial, upon the General Issue in any capital crime, unless some point of Law shall arise proper to be debated. - This has been considered as so great a hardship, and so very inconsistent with the general principles of the English Laws, that the Judges never scruple to allow a prisoner Counsel, to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact: But the Counsel are not allowed to address the Jury; except in cases of Treason, under Stat. 7 W. 3. c. 3. See title Treason V. But in matters of Law, or in the Trial of Issues, or collateral facts, prisoners are entitled to the full assistance of Counsel. See 4 Comm. c. 27. Pott. 232, 242.

If the Jury find the prisoner Not Guilty, he is then for ever quit and discharged of the accusation, except he be appealed, within the time limited by Statute. See title Appeal. And upon such his acquittal or discharge, for want of prosecution, he shall be immediately set at large, without payment of any fee to the Gaoler. Stat. 14 Geo. 3. c. 20. But if the offender is convicted, two collateral circumstances immediately arise, 1. On a conviction, (or even upon an acquittal where there was a reasonable ground to prosecute, and in fact a bond was left prosecution,) for any Grand or Petit Larceny, or other Felony, the reasonable expenses of prosecution, and also, if the prisoner be poor, a compensation for his trouble and loss of time, are by Stats. 25 Geo. 2. c. 56 : 19 Geo. 3. c. 19, to be allowed him out of the County Fines, if he petitions the Judge for that purpose; and by Stat. 27 Geo. 2. c. 5, if he proceeds by his own motion, proceeding by the same statute 18 Geo. 3. c. 19, all persons, appearing upon recognizance or recognizances to give evidence, whether any indictment be preferred or not, and as well without conviction as with it, are entitled to be paid their charges, with a further allowance (if poor) for their trouble and loss of time.

2. On a conviction of Larceny, in particular, the prosecutor shall have restitution of his goods; as to which, see this Dictionary, title Restitution.

III. Causes of suspending the Judge's, by granting a New Trial, are at present wholly erroneous; that is arising from matters foreign to, or deviating from the record.

1. Of this sort are want of Notice of Trial; or any flagrant misbehaviour of the party prevailing towards the Jury, which may have influenced their verdict; or any gross misbehaviour of the Jury among themselves; also, if it appears by the Judge's report, certified to the Court, that the Jury have brought in a verdict without, or contrary to evidence, so that he is reasonably diffatisfied therewith; or if they have given exorbitant damages; or if the Judge himself has misdirected the Jury, so that they found an unjustifiable verdict; for these, and other reasons of the like kind, it is the practice of the Court to award a New, or Second Trial, or to reverse the same, if it appears that the verdict of the two preceding ones. 3 Comm. c. 24. Though the Court will grant any number of new Trials in the same Action, if the Jury find verdicts contrary to the established Law. Tancred and Brown, 1 Term Rep.

The exertion of these supervintent powers of the King's Courts, in setting aside the verdict of a Jury, and granting a New Trial, on account of misbehaviour in the Jurors, is of a date extremely ancient. There are instances, in the Year-books of the reigns of Edward IIId, Henry IV., and Henry VI. of Judgments being null, (even after a trial at bar,) and new Verdicts awarded, because the Jury had eaten and drunk without consent of the Judge, and because the plaintiff had privately given a paper to a Jurymen before he was sworn. And upon these the Chief Justice Glyn, in 1655, grounded the rule precedent that is reported in our books, for granting a New Trial upon account of exorbitant damages given by the Jury; apprehending, with reason, that notorious partiality in the Jurors was a principal species of misbehaviour. St. 466. A few years before, a practice took rife in the Common Pleas, of granting New Trials upon the mere Certificate of the Judge, (unfortified by any report of the evidence,) that the verdict had failed against his opinion; though Chief Justice Rolle (who allowed of New Trials in cases of misbehaviour, surprize, or fraud,) if the verdict was notoriously contrary to evidence, refused to adopt that practice in the Court of King's Bench. And at that time it was clearly held for Law, that whatever matter of force to avoid a verdict ought to be returned upon the Petition, and not merely termed by the Court; led Pollett should wonder why a new Trial was awarded without any sufficient reason appearing upon the record. But very early in the reign of Charles II. New Trials were granted upon Affirmative; and the former Judges of the Court of Law, in respect of New Trials, having driven many parties into Courts of Equity, to be relieved from oppressive verdicts, they are now more liberal.
liberal in granting them; the maxim at present adopted being this, that (in all cases of moment) where justice is not done upon one Trial, the injured party is entitled to another. 3 Comm. c. 24.

Formerly, the principal remedy for reversal of a verdict unduly given, was by writ of A taint; which is at least as old as the institution of the Grand Affidavit by Henry II. in lieu of the Norman Trial by Battel; and as to which, see this Dictionary, title Ataint.

Next to doing right, the great object in the administration of justice, should be to give public satisfaction. If the verdict be liable to many objections and doubts, in the opinion of his Counsel, or even in the opinion of Bystanders, no party would go away satisfied unless he had a prospect of reviewing it. Such doubts would with him be decisive; he would strain the determination as manifestly unjust; and abhor a Tribunal which he imagined had done him an injury without a possibility of redress. 3 Comm. c. 24.

Granting a new Trial, under proper regulations, cures all these, and many other, inconveniences; and at the same time preserves entire, and renders perfect, that most excellent method of decision, which is the glory of the English Law. A new Trial is a rehearing of the cause before another Jury; but with as little prejudice to either party, as if it had never been heard before. No advantage is taken of the former Verdict on the one side, or the Rule of Court for awarding such second Trial on the other; and the subsequent verdict, though contrary to the first, imports no title of blame upon the former Jury; who, had they perverted the same lights and advantages, would probably have altered their own opinion. The parties come better informed, the Counsel better prepared, the Law is more fully understood, the Judge is more master of the subject, and nothing is now tried but the real merits of the case. 3 Comm. c. 24.

A sufficient ground must however be laid before the Court, to satisfy them that it is necessary to justice that the cause should be further considered. If the matter be such, as did not, or could not, appear to the Judge who presided at Nift Prin't, it is disallowed to the Court by Affidavit; if it arises from what passed at the Trial, as it is taken from the Judge's information, who usually makes a special and minute report of the evidence. Counsel are heard on both sides, to impeach or establish the verdict, and the Court give their reasons at large, why a new examination ought or ought not to be allowed. The true import of the evidence is duly weighed, false colours are taken off, and all points of Law which arose at the Trial are, upon full deliberation, clearly explained and settled. 3 Comm. c. 24.

Nor do the Courts lend too easily an ear to every application for a review of the former verdict. They must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case. A new Trial is not granted, where the value is too incalculable to merit a second examination. It is not granted upon nice and formal objections, which do not go to the real merits. It is not granted in cases of strict right, or jumnum jus, where the rigorous execution of extreme legal justice is hardly reconcilable to confidence. Nor is it granted where the scales of evidence hang nearly equal; that which leans against the former verdict, ought always very strongly to preponderate. 3 Comm. c. 24.

In granting such further Trial, (which is matter of found discretion,) the Court has also an opportunity, which it seldom fails to improve, of supplying the defects in this mode of Trial, before shortly alluded to, by laying the party applying under all such equitable terms, as his antagonist shall desire, and mutually offer to comply with; such as, the discovery of some facts upon oath; the admission of others not revealed to be litigated; the production of deeds, books, and papers; the examination of witnesses, inform or going beyond sea; and the like. And the delay and expense of this proceeding are so small and trifling, that it seldom can be moved for to gain time, or to gratify humour. The motion must be made within the first four days of the succeeding Term after the Verdict, within which Term it is usually heard and decided. And it is worthy observation, how infinitely superior to all others the Trial by Jury approves itself, even in the very mode of its revision. In every other country of Europe, and in those of our own Tribunals which conform themselves to the process of the Civil Law, (the Scotch Courts, for example,) the parties are at liberty, whenever they please, to appeal from day to day, and from Court to Court, upon questions merely of fact; which is a perpetual source of obitute chicanery, delay, and expensive litigation. With us, no new Trial is allowed, unless there be a manifest mistake, and the subject-matter be worthy of interpolation. The party who thinks himself aggrieved, may fill, if he pleases, records to his own A taint after judgment; in the course of the Trial he may demur to the Evidence; or tender a Bill of Exceptions. And, if the first is totally laid aside, and the other two very seldom put in practice, it is because long experience has shewn, that a motion for a second Trial is the shortest, cheapest, and most effectual cure for all imperfections in the verdict; whether they arise from the mistakes of the parties themselves, of their Counsel or Attorneys, or even of the Judge or Jury. 3 Comm. c. 24.

If the verdict of the Jury be agreeable to Equity and Justice, the Court will not grant a new Trial, though there may have been an error in the admission of evidence, or in the direction of the Judge. 4 Term Rep. 468.

And it will not be granted merely because it has been discovered, after Trial, that a witness examined was incompetent. 1 Term Rep. 717. — But excessive damages in all cases, except in actions for Adultery, are a sufficient ground to grant a new Trial. 5 Term Rep. 257.

A new Trial may be granted on account of the misconduct of the Jury, as if they have been referred to chance to determine the party for whom the verdict was given: But the Courts have frequently refused to hear any allusion of such conduct from the Jury themselves. 1 Term Rep. 11.

It is generally said, that there cannot be a new Trial, in penal actions and criminal prosecutions, when there is a verdict for the defendant; the principle of this being the great favour which the Law shows to the liberty of the Subject. But the rule does not extend to informations in the nature of Ovo Warrants. See that title, and 2 Term Rep. 484. — Nor does it extend to an action on a penal statute, in which a verdict is given for the defendant, in conic-
consequence of the midirection of the Judge. 4 Term Rep. 753.

See further, Tidd's Practice; and on this subject of Trial in general, and as connected therewith, see this Dictionary, titles Jury; Pleading; Practice; Affid, and other applicable titles.

If the issue tried in any cause is not joined, it is not a good Trial; except it be an issue in Chancery in the Petit Bag feide, which is to be sent from thence to be tried in B. R. Cas. 22. It is a Mis-Trial for a thing to be tried before a Judge, who hath interest in the thing in question; and if a cause is tried by a Jury out of a wrong county, or there be any error in the process against the Jurors, or it is directed to a wrong officer, &c. it is a Mis-Trial; likewise, where matter of record is tried by a Jury, it will be a Mis-Trial; but if the matter of record be mixed with matter of fact, Trial by Jury is good. Hob. 124. A Mis-Trial is helped by the Statute of Jeofails. See titles Amendment; Pleading.

TRIUCH; See Captivity.

TRICENNAL; See Trorial.

TRICESIMA, An ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1d. rent for their houses to the Bishop, who is Lord of the manor. Lib. Niger. Heref.

TRIDINGMOT; The Court held for a Triding or Trishing. See Trishing.

TRIENNIAL ELECTIONS; See Parliament VIII.

TRIGINTALS; See Trorial.

TRISHING; See Trishing.

TRILLION, A word used by merchants in accounts, to shew that the word million is thrice mentioned. Merc. Dict. It signifies millions of millions of millions.

TRIMILCHI, The English Saxons denominated the month of May Trinilichi; because they milked their cattle three times every day in that month. Beda.

TRINITY, Trinitatis.] The number of three Persons in the Godhead or Deity; denying any one of the Persons in the Trinity to be God, is subject to divers penalties and incapacities by Stat. 9 & 10 W. 3. c. 32. See title Blasphemy.

TRINITY- HOUSE, A kind of College at Depford, belonging to a company or corporation of feamen, who have authority by the King's charter to take knowledge of those that defrofier tea marks; also to redress the faults of sailors, and divers other things belonging to navigation. See Stat. 8 Eliz. c. 13; and title Pilots.

TRINK, A filling net, or engine to catch fish. Stat. 2 Hen. 6 c. 15.

TRINOBANTES, The ancient inhabitants of Middlesex, Essex, Hertfordshire, &c.

TRINODA NECESSITAS, Signified a threefold necessary tax, to which all lands were liable, in the Saxon times, i.e. for repairing of bridges; the maintaining of cables or garrisons; and for expeditions to repel invasions; And in the King's grants, and conveyances of lands, these three things were excepted in the immunities from other services, &c. Parch. Antiq. 46 : Cowell: Seddon, in not. Eadmen.

TRIORS, TRIORS, or TRIERS, Such as are chosen by the Court to examine whether a challenge made to the panel of Jurors, or any of them, be just or not. Briske 122. See title Jury II.

TRIORS, LORDS; See title Par. IV.
TROVER.

them to his own use, without the consent of the owner; for which the owner, by this action, recovers the value of his goods. Eff. Ni. Priv. cap. 12; 2 Litt. Abr. 618.

The action of Trover and Conversion was in its original an action of Trespassion: the owner, for recovery of damages, against any person as had actually found another's goods, and refused to deliver them on demand, but converted them to his own use: from which finding and converting, it is called an action of Trover and Conversion. The freedom of this action from the consideration of damages, and the degree of certainty requisite in describing the goods, gave it an advantage over the action of Detinue; that is, by the action of Detinue, the plaintiff has to prove the present possession of the goods, whereas by these actions, the plaintiff need only to suggest the goods, and the defendant to deliver them. And if the goods are delivered, the action is still good; and if not, it is still good, for the goods may be recovered in the action of Detinue. But if the goods are not delivered, the defendant may be liable to damages; and if he refuses to deliver the goods, the action is good, and the defendant is liable to damages.

If the goods are delivered to the plaintiff, he must be paid the value of the goods. But if the goods are not delivered, the defendant may be liable to damages. And if the defendant refuses to deliver the goods, the action is good, and the defendant is liable to damages.

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TROVER.

T rover lies for the finder of a jewel, against a goldsmith who defrauded him of it; 1 S. N. 593: for poiffeision alone gives a sufficient title to maintain this action against all persons, except against the actual owner. Drawing out part of a vessel, and filling it up with water, is Conversion of all the liquor. 1 S. N. 576. A recovery in Trover vells the property of the goods in the defendant. 2 Strange 1728.

In Trover for a bond, the plaintiff need not shew the date; for the bond being lost or converted, he may not know the date: and if he should set out the date, and mistake it, he would fail in his action. Cro. Car. 262.

If the defendant find the bond, and receive the money, action of Account lies against the receiver, and not Trover. Cro. Eliz. 721.

The place of Conversion must be generally mentioned in Trover, or it will be naught. Cro. Eliz. 73, 79. And yet where the Trover of goods is in one county, and the Conversion in another county, the action brought for these goods may be laid in the county where the Conversion was, or in any other county, as it is only a transitory action; and neither the place of Trover, nor Conversion, are traversable. Poth. 23 Car. B. R.

Trover lies against acon and femme, setting forth that they converted the goods to the use of the husband; for the same may be a trespasuer, and convert them to the husband's use, or the use of the stranger, but not to her own use; and if the Conversion be laid ad amum of her self and husband, or ad amum proprium, &c. it will not be good. Cro. Car. 494. In Trover, the plaintiff may lay a Conversion here; and prove it to have been in Ireland. Stil 331: 1 Mod. Engl. Extr. 393.

Action of Trover or Detinue, at the plaintiff's election, may be brought for goods detained; for it is but justice that the party should have his goods detained if they may be had, or else damages to the value for the detaining and Conversion of them. 2 Litt. Abr. 618. Action of Trephals, or Trover, lies for the same thing; though they cannot be brought in one declaration: And the allegation of the Conversion of the goods in trover, is for aggravation of the damages, &c. Cro. Jac. 50: Lutw. 1566. See titles Detinue; Trusts.

Detinue does not lie for money numbered; but Trover and Con vention lies for it: For though, in the finding and conveying generally, the money of one person cannot be distinguished from that of another, all money being alike; yet the proof that the plaintiff lost, and the defendant converted to his own use, must be given in evidence, and the verdict will be for the defendant. 2 Bauff. 157: 1 Roll. Rep. 59. Trover lies not for any part of a freehold; and if doors fixed are removed and converted, it will lie. Wood's Ltt. 540.

There is no proper plea in action of Trover, where it lies, but the General Issue Not Guilty, on which the special matter may be given in evidence, to prove the plaintiff hath no cause of action; or to entitle the defendant to the thing in controversy. 2 Bauff. 153. Vide also, 2 Salk. 674; 1 Phil. 156: Cro. Car. 375; 2 Litt. 522.

But there are several instances of Special Plead in Juxtaposition, in the books, though the purpose of many of them Vols. II.

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T R O V E R.

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TRUST AND TRUSTEE.

Limitations, and also of barring Details of Trusts, as of legal estates; for the Maker of the Rolls, who said he thought there was no exception out of this general rule, nor is there any reason that there should; and that it would be impossible to fix boundaries, and shew how far, and no farther, it ought to go; and that perhaps in early times the necessity of keeping thereto was not been, or thoroughly considered. 1 P. Wms. 945.

Declarations and Creations of Trust, of lands, tenements or hereditaments, are to be in writing, signed by the party empowered to declare such Trust, G. Stat. 29 Car. 2, c. 3. But it is provided, that this shall not extend to Refunding Trusts, or Trusts arising by implication or construction of Law, which shall be of like force as before that Act. See Art. 2, as to Refunding Trusts.

It shall be of the same takes in fee in Trust, may make conveyances of such estates, by order of the Chancellor. G. Stat. 7 Elia. c. 19. If a man buys land in another person's name, and pays the money for the land, this will be a Trust for him who paid the money, though there be no deed declaring the Trust, because the Statute of Frauds extends not to Trusts raised by the implication of Law: And a bare declaration by parcel, on a deed assigned, may prevent any refunding Trust to the assignor, 2 Vent. Rep. 361; 2 Vern. 254. Where there has been fraud in gaining a conveyance from another, that is a reason of making the grantee considered as a Trustee: But the Stat. 29 Car. 2. c. 3, relates only to Equitable Trusts and Interests, and not to an Une, which is a legal estate. 1 P. Wms. 113.

There are only two kinds of Trusts by Operation of Law; either where the deed or conveyance has been taken in the name of one man, and the purchase-money paid by another; or where the owner of an estate has made a voluntary conveyance of it, and declared the Trust with regard to one part to be for another person, but hath been silent as to the other part: In which case he himself ought to have the benefit of that; it being plainly his intent. 3 Barnard. 383.

A Fine and Recovery of Clericque-Trufi shall bar and transfer a Trust, as it should an estate as Law, if it were upon a consideration. Claus. 1st. p. 40. See title Fine of Land; Recovery, and Treat. Eq. lb. 1. c. 3. § 1, in n. And a Clericque-Trufi may bar an entail of a Trust, without fine or recovery, particularly, by Devise. See Treat. Eq. 1. c. 4. § 20. in n.

In Equity, Trusts are to be regarded, that no act of a Trustee will prejudice the Clericque-Trufi; for though a Purchaser for valuable consideration, without notice, shall not have this title any way impeached, yet the Trustee must make good the Trust: But if the Purchaser, having notice, then he is the Trustee himself, and shall be accountable. 4 Abr. Cas. 384. Where Trustees in a settlement join with tenant for life for any conveyance, to defeat a remainder, before it comes in, this is a plain breach of Trust; and those who claim under such deed, having notice of the Trust, will be liable to make good the estates. 2 Salk. 680. Yet in case a Trustee joins with Clericque-Trufi in tail, in a deed to bar the entail, as it is more than what he may be compelled to, it is no breach of his Trust. 1 Chan. Cas. 49. 213. See further, as to the several modes by which prejudice may be induced by Acts of the Trustee, and of the interposition of Courts of Equity in favour of the Trustee and Clericque-Trufi, Treat. Eq. 1. E. c. 7. § 1.

For much useful information, as to the manner in which the Courts have remedied the mischief arising from the secret nature of Trusts, both with respect to the Clericque-Trufi, and the Public at large, see 1 Inst. 292. b. &c., and the long and learned note there.

This with respect to the Clericque-Trufi has been effected, in some degree, by Courts of Equity having held that persons paying money to Trustees, with notice of the Trust, arc, generally speaking, obliged to see it properly applied. It is perhaps to be wished that the operations and consequences of Trusts had been confined to the Trustee and Clericque-Trufi. There is no doubt but the doctrine is, in many instances, of great service to the Clericque-Trufi, as it preferreth his property from the peculations, and other disfitters, to which, if it were left solely to the discretion of the Trustee, it would necessarily be subject. Yet it may be questioned, whether the admission of it is not in general productive of more inconvenience than real goods; for if the Clericque-Trufi is a married woman, an infant, or otherwise incapable of giving assent to the payment of the money to the Trustee, the persons paying it cannot be indemnified against the Trustee's misapplication of it, but by paying it under the sanction of a Court of Equity. This retards and often absolutely impedes the progress of the business, involves the parties in an expensive and intricate litigation, and puts them to very great injury, and, in other respects, useless expense. To avoid this, it is become usual to insist a clausule in deeds or wills, that the receipts of the Trustees shall, of themselves, discharge the persons to whom they are given, from the obligation of seeing to the application of money paid by them as purchasers, &c. See this Dict. of Purchases; and further, 1 Inst. 292. b. &c.

The prevention of the mischief arising from Trusts, with respect to the Public, has been effected, in some measure, by the rule laid down in Courts of Equity, that in any competition of claims, where the Equity of the parties is equal, he who has the Law shall prevail. If a person has the legal estate or interest of the subject-matter in contest, he must necessarily prevail at Law over him whose right is only equitable, and therefore not even noticed by the Courts of Law: This advantage he carries with him even into a Court of Equity, so far, that if the equitable claims of the parties are of equal force, Equity will leave him who has the legal right in full possession of it; and do not any thing to reduce him to an equality with the other, who has the equitable right only. This very important rule of Equity is most fully illustrated, by an inquiry into the doctrine of Courts of Equity respecting Trusts-Tmol of Years attend upon the Inheritance: In this inquiry, the origin and effect of these terms, and the general rules as to the cases in which it is necessary that they should be from time to time assigned to Trustees to attend the inheritance, and prevent a purchaser from all miffes incumbrances, are very clearly and explicitly stated: though these rules must from their nature be subject to an endless variety of modifications. It is conclusively by the learned Writer, that, in all cases of this description, it is infinitely better to err by an excess of care, than to trust any thing to hazard. There is no doubt that the precautions used for the security of purchasers appear sometimes to be excessive; and satisfactory reasons cannot always be given for requiring some of them: Yet the more a person's experience increases, the more he finds the real and useful utility of them; and the
TRUST AND TRUSTEE.

the more he will be convinced that very few of the precautions required, by the general practice of the Profession, are without their use, or can be safely dispensed with... See 1 Term Rep. 296. &c. in notes, and see Treat. Eq. lib. ii. c. 4., § 5., in n.; and also this Dict. title Mortgage.

By the operation of these long terms, the legal estate, being separated from the beneficial interest, many inconveniences would have resulted from them, had not Courts of Equity interfered, and laid down certain rules, restrictive of the legal rights of the Trustee. Hence it became a rule in Equity, that where the Tenant for years is but a Trustee for the Owner of the inheritance, he shall not keep out his Cofui que-Truf; not, pari ratione, ob­trust him in doing any act of Ownership, or in making any assurances of his estates; and therefore, in Equity, such a term for years shall yield and be moulded according to the uses, estates, or charges which the Owner of the inheritance declares or carves out of the Fee. See 1 Term Rep. 704. Courts of Law, feeling the reasonable­ness of this rule, allow it to prevail as an exception to the general rule, which requires a plaintiff in Equity to recover by the strength of a legal title; so that it is now established by many decisions, that, even at Law, an estate in Trust, merely for the benefit of the Cofui-que-Truf, shall not be set up against him; any thing shall rather be presumed. See Coop. 46: Dow v. Pett, Dug. 71: Bull. N. P. p. 110. Leader, Holford's Rev. 758: 27. Rep. 698.

It has been decreed, that a Trust for a long, &c. shall pass with the lands into whole hands forever they come, and cannot be defeated by any act of the father or Trustees. And though a husband and wife have no children in Trustees, in many cases, and they and the Trustees agree to fell the land letted, &c. it will not be permitted in Chancery. Abr. Cof. Eq. 391: 1 Vern. 181. A ferman grants his lands in Trust for himself for life, and to his children for their lives, and then to A. B. This Trust to A. B. is good; though, if it had been to the heirs of their bodies, it would be otherwise. Chanc. Rep. 230, 239.

A Trust to pay portions, legacies, &c. out of the rents and profits of the lands, at the day prefixed, gives the Trustees power to sell; if the annual profits will not do it within that time, then they may sell the land, being within the intention of the Trust: And they cannot sell to raise the money, except be to be paid at a certain time. Rep. Chanc. 176. A Trustee for sale of lands for payment of debts, paying the debts to the value of the land, thereby becomes a purchaser himself. Ibid. 109.

Where a Trustee for paying portions, pays one child his full share, and the Trust estate decays, he shall not be allowed such payment. 2 Chanc. Ca. 132. If one devises land to Trustees until his debts are paid, and remainder over, and the Trustees misapply the profits, they shall hold the land only till they have paid the debts, if the rents had been duly applied; and after that the land is to be discharged, and the Trustees are only answerable. 1 P. Wm. 519. A person having granted a lease of land to Trustees, in Trust to pay all the debts which he should owe at his death, in a just proportion, without any preference; it was here declared, that the simple-contract debt became as debts due by mortgage, and should carry interest. Ibid. 127.

Truf of a fee-simple estate, or fee-tail, is forfeited for Treacon, but not by Felony; for such forfeiture is by way of escheat, and an escheat cannot be but where there is a defect of a tenant; and here is a tenant. Hard. 469. See Jesh. Cent. 245. A Trust for a term is forfeited to the King, in case of Treacon or Felony; and the Trustees in Equity shall be compelled to assign to the King. 3 T. R. 513. If a bond be taken in another's name, or a lease be made to another in Trust for a person, who is afterwards convicted of Treacon or Felony, they are as much liable to be forfeited, as a bond or lease made in his own name, or in his possession. See title Forfeiture; and Treat. Eq. lib. ii. c. 7., § 5., in n.

Trustees being obliged to join in receipts, one is not chargeable for money received by the other: in the case of executors it is otherwise. 1 Sail. 518: 2 Vern. Rep. 515.

But where Trustees to join in receipts, it is not dis­tinguished what was received by one, and what by the other, there they shall both be charged with the whole; so, where one Trustee having received the Trust-money handed it over to his companion, he shall be charged; for where, by any act or any agreement of a Trustee, money gets into the hands of his companion, whether a Trustee or Co-executor, they shall both be answerable. So, if a Trustee be privy to the embezzlement of the Trust-fund by his companion, he shall be charged with the amount. Treat. Eq. ii. c. 7., § 5., in n.

It seems now to be settled, notwithstanding some old determinations to the contrary, that a Trustee (or Executor) is chargeable in Equity with Interest on the Trust-fund in his hands, wherever it appears that he has made Interest; and not only so, but if it appears to have employed the Trust-money in trade, whereby he has derived profits beyond the rate of Interest, he shall account for the whole of such profits: And still further, if a Trustee, or Executor, retain money in his hands for any length of time, which he might by application to the Court, or by investing in the Funds, have made productive, he shall be charged with Interest thereon. Treat. Eq. ii. c. 7., § 6., in n.—A Trustee is entitled to no allowance for his trouble in the Trust; but he will be paid his costs in case of an unfounded suit against him. Treat. Eq. ii. c. 7., § 3., in n.

A Trustee, robbed by his own servant, shall be discharged of it on account; though great negligence may charge him with more than he hath received, in the Trust. 2 Chanc. Ca. 2: 1 Vern. 144.

Lord Heskett is held to have been of opinion, that an action at Law might be maintained against a Trustee for Breach of Trust. See 1 Eq. Ab. 324, in n. But this opinion is inconsistent with Lord Hardwicke's definition of a Trust; which is, that it is such a confidence between parties, that no action at Law will lie, but is merely a case for the consideration of Courts of Equity. 3 Eqd. 612.—That a Trustee is liable, in Equity, for a Breach of Trust, was expressly determined in Vernon v. Vaudrey, Barn. C. 303. But it is material to observe, that even in Equity the Cofui que-Truf is considered but as a simple contract Creditor, in respect of such Breach of Trust; unless the Trustee has acknowledged the debt to the Trust estate under hand and seal. See 2 Atk. 113: Forrest, 109.

Of a Refusing Trust, or Trust by Implication of Law.

It was ruled, by Lord Chancellor Cooper, that the Statute of Frauds, stat. 29 Car. 2. c. 3., § 8, which says, "That all Conveyances, where Trusts and Confidences..."
TRUST.

If a man makes a conveyance in trust for another person, and such conveyance is to be confirmed, the trust is not extinguished merely by the death of the other person. The trust in equity is null if the deed of conveyance is void. Where a conveyance is void, the trust in equity does not continue. Where a conveyance is void, the trust in equity does not continue.

No trust is more certain than that if a man makes a conveyance in trust for such person, and such conveyance is void, the trust in equity does not continue.

A trust in equity must follow the rules of law in the case of an Ufe, and that it would be so in the case of an Ufe is undoubtedly true, and that was Sir Edward Coke's case, in 6 Rep. for Lord Chancellor. Fitz-Gib. 213.

Where a daughter's portion was charged upon the father's land, the request of her father, had revealed her interest in the land, to the intent that he might be enabled to make a clear settlement thereof upon the son. It was declared by the Lord Keeper, that if this was done by the daughter without any caution, there would be a Revaluing Trust in the father, whereby he should be chargeable to the daughter for so much money. Peram. 108.

Where a trustee purchases lands out of the profits of the trust estate, and takes the conveyance in his own name, and no conveyance to the heir, where the particular purposes for which the land was to be converted into money may have failed, see 2 P. Writ. 20. Mr. Coke's note (1) there, where the cases are collected and referred to their respective principles.


TUB, A measure containing sixty pounds weight of tea; and from fifty-six to eighty-six pounds of camphire, 6s. Merch. Dist.

TUB MAN; See title Pre ach. Place.

TUMBERELL, Tumbrellan, Turbulent.] Is an empire of punishment, which ought to be in every liberty that hath view of frank-pledge, for the correction of felons and rebellious women. Kitchin, fdl. 13. See titles Cazatory; Pillory.

TUN, Sax. In the end of words, signifies a Town, or dwelling-place.


TUNNAGE, Lat. Tunnage. A custom or impost granted to the Crown for merchandise imported or exported, payable after a certain rate for every Tun thereof. See title Customs on Mercantile.


TURBARY, Turbaria, from Turba or Tuba, an obsolete Latin word for Tree. It is a right to dig Tubs on a common, or in another man's ground. Kitch. 94. Also it is taken for the place where Tubs are dug. See title Common of Turbaries.

TURBO'S, The incorporation of, is regulated by the Navigation Acts. See that title.

TURKISH COMPANY, The trade to the Levant fulfilled under a charter in the 31st year of King James I., confirmed by letters patent of 13 Car. II. The incorporation was by the name of The Governor and Company of Merchants of England trading into the Levant Seas. The qualifications for admission to this Company were these: They were to be Merchants; and no person residing within 20 miles of London was to be admitted, unless he was made free of the City. The fee of admission was, by the charter of 1st, 25l. for those under 20 years old, and 50l. for those above that age. The greatness of this fee, and the peculiarity of the description of candidates, were thought unnecessary restrictions: And by Stat. 26 Geo. II. c. 18, it was enacted, that every Subject of Great Britain may be admitted, upon proper application, into the Turkey Company, upon paying the sum of 20l. and no more. § 1. And all persons free of that Company may, separately or jointly, export from Great Britain to any part or place within the limits of the letters patent, in any British or Plantation-built ship, navigated according to Law, to any port being a free port of the Company, and a Christian Subject, and submitting to the direction of the British Ambassador, and Consul, any goods not prohibited to be exported; and import, in like manner, from any place within the said limits, raw silk, or any other goods purchased within those limits, and not prohibited by Law. § 3.

The limits of this trade were mentioned very generally in the first charter granted in 1581; the liberty there given was "to trade to Turkey." In the 2d charter, in 1591, the trade is specified more particularly; namely, "to Venice, Zulul, Cephalonia, Candia, and other Venetian territories, the dominions of the Grand Seignior, by Land and Sea, and through his Countries over land to the East Indies." Those charters were both temporary; the first for seven, the second for twelve.
twelve years. There, Did the limits continue the same under the charters of King James and Car. II. Reeve's L. S. 11. 1. 249.

TURN. A kind of sky-coloured cloth, mentioned in Stat. 1 R. 2 c. 8.

TURN, or TOURN, The great Court-Lect of the County, or, in the County-Court is the Court Baron; of this the Sheriff is judge, and this Court is incident to his office: whereas it is called the Sheriff's Turn: And it had its name originally from the Sheriff's taking a Turn or Circuit about his Shire, and holding this Court in each respective Hundred. See & Comm. 273: 2 Hawk. P. C. c. 10.

The nature of the jurisdiction of this and the Court-Lect are exactly the same, the former being only a larger species of the latter, extending over more territory, but not over more causes. Much of the business of both has now (we will not say whether properly or not) by degrees devolved on the Court of Quarter Sessions. See titles County-Court; Court-Lect; and 2 Hawk. P. C. ab initio jurisdic. The Sheriff's Court is still the same as the Court is still the same as that of the old Hundred. Reg. Orig. 75.

Turn-PIKES; See title Highways, Div. 7. B.

TURNY; See Tournament.

TUTORS; See Schoolmasters.

TWAITE, A wood grubbed up, and converted to arable land. Co. Lit. 4.


TWELFHINDI, Sax.] The highest rank of men in the Saxon Government, who were valued at one thousand two hundred shillings; and if any injury were done to such persons, satisfaction was to be made according to their worth. Leg. King Alfred's c. 12, 13, &c.; H. I. c. 76.

TWELVE MRN; See Jury.

TWO WITNESSES, When necessary. See title Evidence.

TWYHINDI, Sax.] The lower order of Saxons, valued at 200. as to pecuniary mists inflicted for crimes, &c. Leg. Alfred's c. 12.

TYHILLAN, An accusation, impeachment, or charge, of any trespass or offence. Leg. Ethelw. c. 2.

TYLWITH. Brit. from tyle, i.e. locis ubi situs domus vel locis adhuc domini opus, or from syll. trad. sigill. Signifies a place wherein to build a house, or a beam in the building: And it is applied to familia, a tribe or family branching forth of another, which, in the old English Heraldry, is called Second or Third House; so that in case the great paternal beak brancheth itself into several Tylwthings, or houses, they carry no second or younger houses farther; and the use of these Tylwthings was to shew not only the originals of families as to the pedigree, but the several definitions and distances of birth, that in case any one should make a failure, the next in any degree may claim their interest according to the rule of descent. &c. Cowell. See title Defend.

TYNMOUTH. There is a customary feast of lands in the honour of Tynemouth, that if any tenant hath held two or more quarters, and died in fee, the land shall go to the eldest daughter for life only, and after to the cousins of the male-line; and for default thereof, to efcheat. 2 Reg. 111, 112.

TYTHES; See Tithe.
VACARIA, A void place, or waste ground. Mem. in Scece. Misc. c Edw. 1.

VACATING RECORDS; See title Record.

VACATION, Vacate.] is all the time between the end of one Term and the beginning of another; and it begins the half day of every Term, as soon as the Court sits. The time from the death of a Bishop, or other spiritual person, till the Bishopric or dignity is supplied with another, is also called Vacation. Statis. Wis. n. 1. c. 21. § 4 Edw. 3. f. 4. c. 4.

VACATURA, An avoidance of an Ecclesiastical Benefice; as, prima Vacaturo, the first Avoidance, &c.

VACARY, Vaccum. A House or Place to keep Cows in; a Dairy house, or Cow-patithe. Fleta, lib. 12.

VACCARIUS, The Cow-herd, who looks after the common herd of cows. Fleta.

VADIARE DUELLUM, To wage a combat, where two contending parties, on a challenge, give and take a mutual pledge of fighting. Corr. See title Battel.

VADIUM PONERE, To take security, bail, or pledges, for the appearance of a defendant in a Court of Justice. Reg. Orig. See Pone.

VADIUM MORTUUM; See Mortgage.

VADIUM VIVUM, A living Pledge; as when a man borrows a sum of another, and grants him an estate, as of 20l. per annum, to hold until the rents and profits shall repay the sum borrowed. See Mortgage.

VAGABOND, Vagabonds.] One that wanders about, and has no certain dwelling; an idle fellow. See Vagrant.

VAGRANTS,

Vagrantes. These are divided into three classes: viz. Idle and Disorderly Persons—Rogues and Vagabonds—and Incorrigible Rogues: And are thus described and particularised at full length in the Stat. 17 Geo. 2. c. 5.—They who threaten to run away and leave their wives or children to the parish, or unlawfully return to a parish from whence they have been legally removed; or, not having wherewith to maintain themselves, live idle, and refuse to work for the usual wages; and all persons going about as patent-gatherers, or any subtile craft to deceive and impose on a person; or playing or betting at any unlawful games or plays; and all persons who run away and leave their wives and children, whereby they become chargeable to any parish; all pedlars not duly licensed; all persons wandering abroad, and lodging in alehouses, barns, out-houses, or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, mariners, or pretending to go to work in harvest, not having proper certificates; and all other persons wandering abroad and begging; and all persons going from door to door, or placing themselves in streets, &c. to beg in the parishes where they dwell, who being apprehended for the same, shall refund or escape, shall be deemed Rogues and Vagabonds. § 2.

All end-gatherers offending against the Stat. 17 Geo. 2. c. 23, being convicted; all persons apprehended as rogues and vagabonds, and escaping, or refusing to go before a Justice, or to be examined upon oath before such Justice, or refusing to be conveyed by paid or giving a false account of themselves after warning of the punishment; and all rogues or vagabonds breaking or escaping out of any House of Correction; and all persons who, having been punished as Rogues and Vagabonds, shall again commit any of the said offences; and offenders against this Act, having children with them, (and such children being put out apprentices or servants pursuant to this Act,) being again found with the same children, shall be deemed Incorrigible Rogues. § 4.

The punishment of Idle and Disorderly Persons is commitment to the House of Correction, there to be kept to hard labour, not exceeding a month. § 1.

Rogues and Vagabonds are to be publicly whipt, or sent to the House of Correction until the next Sessions, or any less time; and, after such whipping or commitment, may be passed to their last legal settlement or place of birth; or, if under fourteen, and having a father or mother living, to the place of abode of such father and mother. And if committed until the next Sessions, and adjudged a Rogue or Vagabond, the Justices may order them to be kept in the House of Correction to hard labour, not exceeding six months. § 8.

A person adjudged at the Sessions an Incorrigible Rogue may be kept in the House of Correction to hard labour, not exceeding two years, nor less than six months; and during the confinement be corrected by whipping, at such times and places as the Justices shall think fit, and may then be passed as aforesaid: And if a male, and above the age of 12 years, the Justices, before his discharge, may send him to be employed in the King's service, either by sea or land. If, before the expiration of his confinement, he shall escape from the House of Correction, or offend again in the like manner, he shall be deemed to be guilty of Felony, and transported for any time not exceeding seven years. § 9.
VAGRANTS.

Any person may apprehend and carry before a Justice of Peace any vagrant persons going about from door to door, or placing themselves in the streets, highways, or passages, to beg alms in the parishes where they dwell; and the Justices may order the Overseers of the Poor to pay such person 5s. for every offender; which, on refusal of payment, may be levied on the Overseers’ goods. § 1.

A constable refusing or neglecting to use his endeavour to apprehend any offender, shall forfeit not exceeding £4. nor less than 10s. to the use of the Poor, to be levied by distress. And any other person charged by a Justice of Peace to apprehend such offender, refusing to do so, shall forfeit 10s. A Justice may order the High Constable to pay to any person, whether a constable or not, who shall apprehend any such offender, 10s. for every offender. The Justices are, four times in the year at least, to cause a general privy search to be made in one night, for the apprehending Rogues and Vagrants. § 5, 6.

To prevent expenses in passing Rogues, Vagrants, and Incorrigible Rogues, the Justice is to deliver to the Officer a note, directing how they are to be conveyed, whether in a cart, by horse, or on foot. § 10. The Constable is to convey such person, in such manner and time as by the said direct order to the place where such person is ordered to be sent, if in the same county, &c.; but if in another county, &c., he shall deliver the person to the proper Officer of the first town in the next county, &c.; in the direct way to the place where such person is to be conveyed, together with the said note and duplicate of examination; taking his receipt for the same; and such Officer is immediately to apply to a Justice of Peace in the same county, who is to make a like note and deliver it to the Officer, who is to convey the person to the first parish, &c., in the next county; and so in like manner from one county to another, till they come to the place where such person is sent: And if the Officer who shall receive such person there, shall think the examination to be false, he may carry the person before a Justice of Peace, who, if he think cause, may commit such person to the House of Correction, till the next Sessions; where the Justices, if they think cause, may deal with such person as an Incorrigible Rogue; but he shall not be removed but by order of two Justices. § 11.

If the Vagrant, upon search, be found to have effects sufficient to pay all or part of the expense of passing him, the Justice may order the same to be sold and employed for that purpose. The Justices at Sessions may direct what rates and allowances shall be made for passing such Rogues, Vagrants, &c., and make orders for the more regular proceeding therein. The High Constable is to pay to the Petty Constable, or other Officer, the rates so allowed, on penalty of forfeiting double the sum, to be levied by distress. § 12.

When a Vagrant is to be passed to Ireland, the Isle of Man, Jersey, Guernsey, or Scilly, the matter of any ship bound to those places shall, on a warrant from a Justice of Peace, and being paid such allowance as the Justice shall think proper, receive such Vagrant, and convey him to such place, and give a receipt for the Vagrant and money on the back of the warrant, on penalty of 51. to the Poor, to be levied by distress; but not to be obliged to take above one Vagrant for every twenty tons burden of his ship. The parish to which any Vagrant shall be passed may employ him in work till he shall take himself to some service; and if he shall refuse to work or go to service, he may be sent to the House of Correction. § 14.

From the above statute, and other cited, it appears that Idle and Disorderly Persons are, 1. Thos. who threaten to run away, and to leave their families upon the parish. (For further provisions as to these, see title Poor III. 2.) 2. Who return to the parish from which they are removed as paupers, without a certificate; (see title Poor VI.) 3. Who refuse to work for the usual wages. 4. Who beg within their own parishes. § 5. (By Stat. 3 Geo. 3. c. 45. § 5.) 5 Who neglect work, or who spend their money idly, without making a sufficient allowance for the subsistence of their families. All these are punishable with one month’s imprisonment in the House of Correction.

Rogues and Vagrants are thus described: — 1. Gatherers of ains under pretence of loffes, or for prisons or hospitals. — 2. Pencers. — 3. Knockers. — 4. Players of Interludes, not being authorized by Law; (see title Playhouse.) — 5. Minders. — 6. jugglers. — 7. Gypsies; (see title Egyptians.) — 8. Fortune-tellers. — 9. Receivers of stolen goods. — 10. Players and Beggars at unlawful games. — 11. Persons who run away and leave their families chargeable to the parish; (see title Poor III. 2.) — 12. Unlicensed Pedlars; (see title Hovellers and Pedlars.) — 13. Persons who wander abroad, and lodge in alehouses, out-houses, or in the open air, without giving a good account of themselves. — 14. Persons wandering from home, under pretence of seeking harvest-work, without a proper certificate; (see title Poor V.) — 15. All wandering Beggars. — 16. (By Stat. 24 Geo. 3. c. 88.) All persons apprehended with any picklock or implement, with intent to feloniously break and enter any dwelling-house, or with any offensive weapon, with intent to feloniously assault any person; or who shall be found in or upon any dwelling-house, out-house, yard, area, or garden, with intent to steal. — 17. (By Stat. 31 Geo. 3. c. 45. § 72.) Soldiers and Mariners wandering about and begging. (Before this Act, it was the practice of some Justices to grant begging passes. Comp. 10th Stat. 791, 1.) These are all punishable with whipping, or imprisonment not exceeding six months.

Incorrigible Rogues, are Rogues and Vagrants who escape when they are apprehended; or refuse to go before a Justice; or to be examined; or who give a false account of themselves, after warning of the consequences; or who refuse to be conveyed by a pale; or who escape from the House of Correction; or who commit, after punishment, a second offence. These are punishable with whipping, and imprisonment not exceeding two years; and escaping from confinement, when committed as incorrigible, are liable to be transported for seven years.

Persons harbouring Vagrants are liable to a fine of 40s., and to pay all expenses brought on the parish thereby. Stat. 17 Geo. 2. c. 5. § 23.

Female Vagrants are subject to imprisonment the same as Males; but are not now, in any instances, liable to whipping. Stat. 32 Geo. 3. c. 45.

The Justice, or Court of Quarters Sessions, may, if they think proper, order a Vagabond, after punishment, to be conveyed to his place of settlement by a pale. Stat. 17 Geo. 2. c. 5. §§ 7, 8. But by Stat. 17 Geo. 3. c. 45.
VAGRANTS.

A common Soldier, billeted in a distant parish from that in which his family resides, is not a Vagrant within the stat. 17 Geo. 2. c. 5, as a person who has run away from his family, although he is able, and refuse to maintain them; and they, in consequence of being thus aban-

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No Justice of Peace shall order any Vagrant to be conveyed by a paupers, who has not been convicted of an act of Vagrancy, and actually whipped, or imprisoned for at least seven days, which shall be certified in the parish. The object of this was to correct an abuse which much prevailed, of removing Paupers by a Parish, who had committed no act of Vagrancy, and who ought to have been removed by an Order of Removal. For the effects of an Order of Removal and a Vagrant Paus are very different; in the first place, the Parish removing bears all the expense of conveying the Vagrant; but the expense of conveying Vagrants by a paupers is borne by each County, which they are carried: And no appeal lies against a Vagrant Paus, so that the Parish to which the Vagrant is conveyed must be at the expense of sending him, by an order of removal, the Vagrant back again; or to such place as, on inquiry, may be thought his legal settlement. 3 Sum. J. tit. Vagrants X. And see Cong's Rts. ii. 782, pl. 713, that a person, not in a state of Vagrancy cannot be passed, even with his own consent.

By stat. 25 Geo. 2. c. 36, it shall be lawful for any two or more Justices, in case any person apprehended, upon any general privy search, or by virtue of any special warrant, shall be charged before them with being a Rogue and Vagabond, or an idle and disorderly person, or with suspicion of felony, (although no direct proof be then made thereof,) to examine such person upon oath, not only to the parish or place where he was last legally settled, but also to his means of livelihood; the substance of which examination shall be put into writing, and be subscribed by the persons so examined, and the said Justice shall likewise sign the same, and transmit it to the next Sessions of the Peace, to be there filed and kept on record: And if such person shall not make it appear to such Justices, that he has a lawful way of getting his livelihood, or shall not procure some responsible housekeeper to appear to his character, and to give security for his appearance before such Justices, at some day to be fixed, (if the same shall be required,) to commit such person to some prison or house of correction, for any time not exceeding six days; and in the mean time to order the Overseers of the Poor where such person shall be apprehended, to insert an advertisement in some public paper, declaring such suspicious person, and any things which shall be found upon him, and which he shall be suspected not to have honestly come by; and mentioning the place to which he is committed, and time and place when and where such person is to be again brought before them to be re-examined; and if no accusation shall then be laid against him, then such person shall be discharged. § 12.

By stat. 32 Geo. 3. c. 45, no reward shall be paid for apprehending any Rogue or Vagabond, until he shall have been punished as such. § 2. — Convicts discharged from prison, and persons acquitted at the Assizes, &c. may be convied by pamphlets. § 4. — Justices may order Vagrants to be conveyed by Malters of Houses of Correction. § 5. — The Sessions shall fix the rate to be allowed for passing Vagrants. § 6.

VALET, VALECT, VALEDICT, Voleatus vel Voleo.] Was anciently a name specially denoting young gentleman, though of great descent or quality; but afterwards attributed to those of lower rank, and now a servant, or gentleman of the chamber. Com. i. 5.

VALOR MARITAGII. Under the ancient tenures, while an infant was in ward, the guardian had the power of tendering him or her a suitable match, without dispensation or inequity: Which if the infants refused, they forfeited the value of the marriage to their guardian, that is, so much as a jury would award, or any one would bond to give to the guardian for such an alliance: And if the infants married themselves without the guardian's consent, they forfeited double the value. This was one of the greatest hardships of our ancient tenures. — But thetenures being taken away, by stat. 12 Geo. 2. c. 24, the law is abolished. See title TENURE II. 4.

VALUABLE CONSIDERATION; See title CONSIDERATION.

VALVASORS; See VASAVORS.

VALUE, Valutia, Valor.] Is a well-known word; and the Value of those things as to which offences are committed, is usually comprised in indentures; which seems necessary in itself to make a difference from petit larceny, and in trespasses to aggravate the fault, &c. But in other cases a distinction has been made between Value and Price. If a plaintiff declares in an action of trespass for the taking away of live cattle, or one particular thing, he ought to say that the defendant took them away, petitio so much; if the declaration be for taking of things without life, it must be alleged ad valorem, &c. Is that live cattle are to be prized at such a Price, as the owner of them did esteem them to be worth; and dead things to be reckoned at the Value of the market which may be certainly known. Of coin, not current, it shall be petitio; but of common coin, current, it shall be neither petitio nor ad valorem, for the Value and Price thereof is certain: The difference between petitio and ad valorem may proceed from the rule in the register of writs, which shews it to be according to the ancient forms used in the Law. Wilt. Symb. par. 2. 2. Lit. Abr. 629. A jewel, it is said, is not valuable in Law, but only according to the Valuation of the owner of it, and is very uncertain; But there seems to be a certain Value for
On Variance, in the persons or number of acres, &c., between a Fine and an Indenture to lead the use; if the party averse, there was not any other consideration, or new agreement, but that the Fine was levied according to the use and intents mentioned in the indenture, it is good. 5 Rep. 25. See further, titles Amendment; Agreement; Error; Pleading, &c.

VASSAL, Vaifilus.] In our ancient customs signifies a Tenant or Felidary, or person who vowed fidelity and homage to a Lord, on account of some land, &c., held of him in fee; also a slave or servant, and especially a domestic of a Prince. Du Cange, Vaifilus is said to be quasi inferior focus, as the Vasil is inferior to his master, and must leave him; and yet he is in a manner his companion, because each of them is obliged to the other. 3 Ball. See 2 Comm. 541 and this DB. title Tenants.

VASSALAGE. The state of a Vassal, or servitude and dependency on a superior Lord: Large Vassalage belonged only to the King.

VASSELLERIA, The tenure or holding of Vassals.

VASTO, A writ against tenants for term of life or years, committing Waifs. F. N. B. 55; Reg. Orig. 72. See title Waifs.

VASTUM, A Waife, or common lying open to the cattle of all tenants who have a right of commons.

VASTUM FORESTÆ vel BOSCI; That part of a Forest, or Wood, wherein the trees and underwood were to be destroyed, that it lay in a manner waife and barren. 4 Paroch. Aniq. 171.

VAVASOR, Vavasor.] The lands that a Vavasor held. 3 Blaft. lib. 2.

VAVASORY, Vavasoria.] The lands that a Vavasor held.

VASCULARIA, The tenure or holding of Vassals.

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VENARIA, Beasts which are caught in the woods by hunting. Leg. Cana., c. 109.

VENATIO, In the statute of Charia de Persia, signifies Venatio, in Fr. Venison. It is called Venatio, of the means whereby the beasts are taken, quorumsecum Venationis captivitatem, and being hunted are most wholesome. And they are termed beasts of Venary, because they are gotten by hunting. 4 Inst. 316.

VENCTIONE EXONAS, A Judicial Writ, directed to the Sheriff, commanding him to sell goods which he hath formerly taken into his hands, for the satisfying a judgment given in the King's Court. Reg. Fasc. 33: Stat. 14 Car. 2. c. 21. If the Sheriff upon a Fieri facias takes goods in execution, and returns that he hath so done, and cannot find buyers; or if he delay to deliver them to the party; or then the writ, Venationexonases, shall issue to the Sheriff, reciting the former writ and return, and commanding the Sheriff to make sale of the goods, and bring in the money. 11 H. 7. 1: Dyer 593.

If a Soprobation be not delivered to the Sheriff till he hath in part executed a writ of execution, he may afterwards be authorized to go through with it by a Venationexonases; as he may also in the like case after a writ of Error. Dyer 984: Cor. Aliis 557: 1 Roll. Abr. 894.

If goods are not taken to the value of the whole, the plaintiff may have a Venationexonase for part, and a Fieri facias for the residue, in the same writ. Thof. Brum. 395.

And it seems that a Venationexonases may be directed to the new Sheriff, where the old one returns that he has taken goods, which remain in his hands for want of buyers. 2 Samb. 243. But the more usual way of proceeding in such cases, is by writ of Distraint to the new Sheriff, commanding him to distrain the old one, till he sell the goods, &c. Of this writ there are two forts; the first, which is the more ancient, commands the Sheriff, to whom it is directed, to distrain the late Sheriff, so that he expose the goods to sale, and cause the monies arising therefrom to be delivered to the present Sheriff; in order that such Sheriff may have those monies in Court at the return. Gib. Ex. 21: 54 Hen. 6. 36. The other writ, which is the more usual, is to distrain the late Sheriff to sell the goods, and have the money in Court himself. 6 Mod. 299: Reg. 164: Thof. Brum. 90: Ofh. Brum. 45: 2 Ed. Rym. 1074: 5: 1 Balk. 415.

VENIDITOREGIS, The King's Saleman; being the person who exposed to sale goods and chattels seized or restrained to answer any debt due to the King. This office was granted by King Edw. 1. to Philip de Lardiner, in the county of Yorke; but the office was vested into the King's hands for the abuse thereof. Anna 2 Ed. 2.

VENOR and VENDDE. Vendor is the person who sells any thing, and Vendee the person to whom it is sold. Where a man sells a thing to another, it is implied that the Defendant shall make assurance by bill of sale to the Vendee, but not unless it be demanded; per Finch, Chancellor. 2 Chan. Cases 5. See 21 Vin. Abr. title Vendor and Vendee.

VENELLA, A narrow or slant way. Menag. 1. 409.

VENIA, A kneeling or low prostration on the ground, by petition. Welshing, 196.

VENIRE FACIAS, A writ judicial awarded to the Sheriff to cause a Jury in the neighbourhood to appear, when a cause is brought to issue, to try the same. Old Nat. Br. 157. See title Jury 1.

Formerly, many questions arise concerning the place of the warrant, or whence a Jury should come. Vide 2 Litt., 614: 615: Co. Eliz. 202: 3 Salk. 381: Vide 104: Hook 357: 471: 5 Report 365: Lat. 215. But now, by statute 4 & 5 Ann. c. 16, a Venire Facias may be from the body of the county, &c. In an information against a county for not repairing a bridge, it was held, that the Attorn.-Gen. might take a Venire to any adjacent county; and that it might be de corpore of the whole, or de vicario of some particular place therein next adjoining. 3 Salk. 381.

One Venire Facias is sufficient to try several issues, between the same parties, and in the same county. 2 Cro. 550. Where an action was brought against two, they both joined issue, and one died; and after the Venire Facias was awarded to try the issue between both, which was done; and held to be no error, because one of the defendants was living. Cro. Carr. 508. See title Amendment. If a Venire Facias is returned by the Coroner for defect of the sheriff, &c. when it ought to be returned by the Sheriff, the trial is wrong, and not remedied by any statute of Jeofalta. 5 Rep. 365. In all cases, where there is to be a Special Jury, the Venire must be special. If the matter to be tried be within divers places, and one and the same county, the Venire Facias shall be general; and if in several counties, it shall be special. 2 Litt. Abr. 635.

If a matter of Law be depending in Court, or if there be judgment by default as to part, and an issue also joined as to other part, there is to be a special Venire awarded, tom ad triandum exitum, quam ad inquirendum de damno, &c. as well to try the issue, as to inquire of the damages, both upon the issue and the matter put in judgment of the Court. 2 Litt. Abr. 635.

At a trial at Nisi Prius, the plaintiff changed the Venire Facias and panel, and had a Jury the defendant knew not of; and ruled, that the defendant cannot be aided, if the first Venire was not filed: And a difference was taken when the first Venire was not filed, that he cannot be aided, because he may refer to the Sheriff, and have a view of the panel, to be prepared for his challenges; but if the first Venire was filed, then the defendant shall have a new trial. Raym. 79.

A Venire Facias after filed, cannot be altered without consent of parties: Though where a verdict in a cause is imperfect, so that judgment cannot be given upon it, there shall be a new Venire Facias to try the cause, and find a new verdict; 2 Litt. 614, 615. Venire is now little more than form, unless in case of a trial at bar.

Venire Facias, is the common process upon any Presentment; being in nature of a summons for the party to appear; and is a proper process to be first awarded on an indictment for any crime, under the degree of Treason, Felony, or Maim, except in such cases wherein other processes is directed by statute. See title Proceeds 11. The Venire Facias ad respondendum may be without a day certain, because by an appearance the fault in this process is cured; but a Venire Facias ad triandum exitum must be returnable on a day certain, &c. 3 Salk. 371.

Venire Facias est Mutamuus; See this Dictionary, title Venire Inscripti.

Venire Facias de Novo; The ancient proceeding of the Common Law, to send a cause to a New Trial. And this proceeding is still preferred in certain cases. New Trials are generally granted where a General
Verdict is found; a Venire Fiaci de Novo, upon a Special Verdict. But the most material difference between them is this, that a Venire Fiaci de Novo must be granted upon matter appearing upon the record; while a New Trial may be granted upon things out of it, if the record be never to right: A Venire de Novo therefore is granted, if, if it appears upon the face of the record, that the Verdict is so imperfect that no judgment can be given upon it. Where it appears that the Jury ought to have found facts differently from what they do. Sec 1 Will. 55; and this Dictionary, title Trial.

The following seem to be the cases in which a Venire de Novo is granted: 1st, Where the Jury are improperly chosen, or there is any irregularity in returning them—zilly. Where they have improperly conducted themselves—zilly. Where they have general damages, upon a declaration confining of several counts; and it afterwards appears that one or more of them is defective. 

4thly, Where the Verdict, whether general or special, is imperfect, by reason of some ambiguity or uncertainty; or by finding less than the whole matter put in issue; or by not affilling damages. Todd’s Prat. K. B.; and the authorities there cited.

By plat. 7 & 8 W. 3. c. 52. § 1, if the plaintiff, after ifuing Jury process, does not proceed to trial at the first Assizes, he may have a Venire de Novo; but if the Jury be discharged at the Assizes in order to have a view, there is no need of a Venire de Novo. Com. 244.

A Venire de Novo may be granted by a Court of Error; or after a Damnuery to Evidence; or Bill of Exceptions. Todd’s Prat.

Veniare, The Book of Ecclesiastics: so called because of the Venire ex Clinton Domino, Jubilate Deo, &e. written in the Hymn-book or Psalter as it is appointed to be sung. It often occurs in the history of our English Synods; and is called Venitatorium. Mon. Aug. iii. 452.

Venter, Lat. 1. Literally the belly; it is used in Law to distinguish the issue, where a man hath children by several wves; (fated to be by a first or second Venter.) How they shall take in defcents of lands; See ut. Defunct. Venire Inspiciente, A writ to search a Woman who faith she is with Child, and thereby withholdeth lands from the next heir: The Trial whereof is by a Jury of Women. Reg. Orig. 227.

Where a Widow is suspected to feign herself with Child, in order to produce a Supposititious Heir to the estate, the Heir presumptive may have this Writ to examine whether she be with Child or not: and if she be, to keep her under proper restraint till delivered: But if the Widow be, upon examination, found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again on the birth of a Child within forty weeks from the death of a husband. 1 Comm. c. 16. See title Bajard.

See farther on the writ De Venire Inspicienti, Aisghah: Cales, Magl. 391; and 2 P. Wms. 501. S. C.; in which King, C. on petition, granted the writ, though the persons applying were only Tenants in Tail. And this writ is now granted, not only to an Heir at Law, but to a Devisee, whether for Life, or in Tail, or in Fee; and whether his interest is immediate or contingent. Ex parte Bateman, at the Rolls, 16th Dec. 1783: Ex parte Bello, at the Rolls, 20th Dec. 1780: Ex parte Wesley,

In Cmrs. Trin. T. 1792. See 4 Bro. C. R. 90. In Murphy’s Report of Aisghah’s Cafe, a case of Personall Estate is cited, in which the then Master of the Rolls, in conformity to the reason of the Common Law, directed that the Master should appoint two Matrons to inspect a Woman. See 1 Inf. 8, 6, note 3; where the necessity of an Act of Parliament to regulate the proceedings on this writ is suggested. See also this Dictionary, title Execution and Reprieve.

Thomas de Aldham of Surry, brother of Adam de Aldham, A. 4. H. 3., claimed his brother’s estate: But Joan, widow of the said Adam, pleaded she was with Child; whereupon the said Thomas obtained the writ Venire Inspiciente, directed to the Sheriff—Quod appro­batur tenens abiuravit et jurebus suis, &c. et afferet de jurebus suis, &c. propterea quia justitia nec non praestitatem ille habuisse uterque faciis et jurebus suas per eam et Venstri. et ipsum suum jurebus et jurebus suis faciis et jurebus suis fuerit.

But the Sheriff should be directed to summon the said Thomas and his brother; and to certify the Sheriff that they had caused her to be searched, and returned the writ accordingly. Ex parte Adam duorum militum, jusiciarum ostius apud Welden, &c.

In Easter Term, 39 Eliz. this writ was fixed out of the Chancery into C. B. at the profession of Percival Willoughby, who had married the eldest of the five daughters of Sir Francis Willoughby, who died without any son, but left a wife named Dorothy, that at the time of his death pretended herself to be with Child by Sir Francis; which, if it were so, all the five fathers would thereby lose the inheritance descended unto them; which writ was directed to the Sheriff of London, and they were commanded to cause the said Dorothy to be viewed by twelve Knights, and learned by twelve Women, in the presence of the twelve Knights, and twice; and if the Sheriff accordingly caused her to be searched, and returned the writ accordingly, out of C. B., requiring the Sheriff to search her in such a house, and that the doors should be well guarded; and that every day she should cause her to be viewed by one of the women named in the writ; and when she should be delivered, that some of them should be with her to view her birth, whether it be male or female, to the intent that there should be no falsity: And upon this writ the Sheriff returned, That they had caused her accordingly to be kept and viewed, and that such a day she was delivered of a Daughter. Gro. Eliz. 569.

The Sheriff’s of London, with a Jury of Women, whereof two were Midwives, came to the Lady’s house, and into her chamber, and sent to her the women, sworn by the Sheriff before, to search, try, and speak the truth whether she was with Child or not. The men all went out, and the women searched the Lady, and gave their verdict that she was with Child; whereupon the Sheriff returned the writ accordingly. More 523. pl. 632.

In the 2nd year of King James I., the Widow of one Dunstan married within a week after the death of her first husband; and his cousin and heir brought the writ Venire Inspiciente directed to the Sheriff of L. who returned the writ that he had caused her to be searched by men; &c.
Matrons, who found her with Child, et quod partitura fuit within such a time; and thereupon it was prayed, that the Sheriff might take her into his custody, and keep her till she was delivered; but because the ought to live with her husband, they would not take her from him; but he was ordered to enter into a recognizance not to remove her from his dwelling-house, and a writ was awarded to the Sheriff to cause her to be inpicted every day by two of the women which he had returned had searched her, and that three of them should be present at her delivery, &c. Cro. Jac. 685.

VENUE.

VICINETUM, OR VICINETUM.] A Neighbouring Place, loco qui venit hinc:et. The place whence a party is to come for Trial of Causes. F. N. B. 115.

The want of a Venue is only capable of such a plea as admits the fact, for the trial whereof it was required to lay a Venue. 3 SaLT. 381.

Where the Action could only have arisen in a particular county, it is local, and the Venue (by original) must be laid in that county; for if it be laid elsewhere, the defendant may demur to the Declaration, or the plaintiff, on the General Issue, will be non-suited at the Trial. But where the Action might have arisen in any county, it is transitory, and the plaintiff may, in general, lay the Venue wherever he pleases; subject to its being changed by the Court, if not laid in the very county where the Action arose. Thus, in an Action upon a Lease for Rent, &c. founded on the privity of estate, as in Debt by the Assignee or Devisee of the Lessor against the Lessee; or by the Lessee, or his personal Representatives, against the Assignee of the Lessee; or against the Executor of the Lessee, in the debt and accident; or in Covenant, by the Grantor of the Reversion against the Assignee of the Lessee; the Action is local, and the Venue must be laid in the county where the estate lies. But in an Action upon a Lease for Rent, &c. founded on the privity of contract; as in Debt by the Lessee against the Lessor, or his Executor in the accident only; or in Covenant, by the Lessor or Grantor of the Reversion against the Lessee; the Action is transitory, and the Venue may be laid in any county, at the option of the plaintiff. Tidd's Pratls. K. B.

There are, however, some Actions of a transitory nature, where the Venue must be laid in the county where the facts which are the ground of the Action were committed, and not elsewhere. Such are all Actions upon Penal Statutes, &c. 21 Jam. 1. c. 4. § 2. Actions upon the Cates, or Trespases; against Juictices of Peace, Mayors, or Bailiffs, of Cities or Towns; Corporate; Head-boroughs, Portreves, Constables, Tithing-men, Churchwardens, &c. or other persons acting in their aid and assistance, or by their command, for any thing done in their official capacity. Stat. 21 Jam. 1. c. 12. § 5. Actions against any person or persons, for any thing done by an Officer or Officers of the Exchequer or Caterls, or others acting in his or their aid, in execution or by reason of his or their office. See stat. 20 Car. 2. c. 70. § 34: 24 Car. 2. § 47. § 35. In these Actions, the Venue must be laid in the county where the facts were committed, and not elsewhere. On the other hand, the Venue in a transitory Action is, in some cases, altogether optional in the plaintiff; as where the Action arises in Wales, or beyond the Sea, or is brought upon a Bond or other Specialty, Promissory Note, or Bill of Exchange; for Scandalum Magnatum, or a Libel defamed throughout the kingdom; against a Carrier or Lighterman; for an Escape or False Return; and, in short, wherever the cause of action is not wholly and necessarily confined to a single county. In these cases, the Venue cannot be changed by the Court, but upon a special ground. Tidd's Pratls. K. B. and the Authorities there cited.

The Venue by Bill is local or transitory, as by Original. In local Actions, it must be laid in the county where the caufe of action arose; in transitory Actions, it may be laid in any county. The County in the margin will help, but not hurt. Hence, if there be no Venue laid in the body of the Declaration, reference must be had to the margin; but where a proper Venue is laid in the body, the word in the margin will not vitiate it. Tidd's Pratls. K. B. 3 Term Rep. 387.

The Law having settled the distinction between local and transitory Actions, it seems that, towards the reign of Richard II. this distinction was but little attended to; for a litigious plaintiff would frequently lay his Action in a foreign county, at a great distance from where the cause of it arose, and by that means oblige the defendant to come with his witnesses into that county. To remedy which, it was ordained by stat. 6 K. 2. c. 2. "To the intent that writs of Debt and Accont, and all other such Actions, be from henceforth taken in their counties, and directed to the Sheriffs of the counties where the contracts of the same Action did arise; that if from henceforth, in Pleas upon the same Writs, it shall be declared, that the contract thereof was made in another county than is contained in the original Writ, that then incontinent the same Writ shall be utterly abated." The design of this statute was to compel the suing out of all Writs arising upon contract, in the very county where the contract was made; accordingly to a Law of Hen. 1. c. 31. Titl. C. P. Sqg. n. But as the statute only prefers, that the Court shall agree with the Writ in the place where the contract was made, it did not effectually prevent the mischief: And therefore the stat. 4 H. 4. c. 18. directed all Attornies to be sworn, that they will make no suit in a foreign county; and there is an Old Rule of Court, which makes it highly penal for Attornies to transgress this statute. R. Mimb. 165.4.

Soon after the statute of Henry IV. a practice began of pleading, in abatement of the Writ, the impriopriety of its Venue, even before the plaintiff had declared. At first, in the reign of Henry V. they examined the plaintiff upon oath, as to the truth of his Writ. But, soon after, they began to allow the defendant to traverse the Venue, and to try the traverse by the County. This practice being subject to much delay, the Judges introduced the present method of Changing the Venue upon motion, on the equity of the adverse party which, Ld. Hale says, began in the time of James I. 7 SaLT. 670. The forms of the rule and affidavit are also lated by Styles, as established in 25 Car. 1. Sty. P. R. C31. (ed. 1797.)

It is now settled, in transitory Actions, the Venue may be changed upon motion, either by the plaintiff or defendant. The plaintiff shall not directly alter his Venue after the Election Day of the next Term after appearance;
VENUE, CHANGING.

appearance; though he would pay costs, or give an im-

pittance. Yet he may in effect do it, by moving to

and that after the defendant has changed the

or pleaded, and even after two Terms have

from there where the plaintiff has laid it; and

he may even change it from London to Middlesex, or

elsewhere. But the Venue cannot be changed in local

actions. And, in transitory actions, where material

evidence arises in two counties, the Venue may be laid

in either. R. M. 10 Geo. 2. reg. 2, (c). And if it be

in a third county, the Court will not change it; for

the plaintiff in such cases cannot make the necessary

affidavit, that the cause of action arose in a particular

county, and not elsewhere. 1 Will. 178. In order to

change the Venue, therefore, it is indispensably necessary

that the cause of action should be wholly confined to a

single county; and therefore, where that is not the

case, the Court will not change it. Thus, in an Action

of Debt on Bond or other

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preperfed through several counties, or in a letter written by the

defendant in one county, and directed into another, the

Court will not change the Venue; because the defendant

cannot make the common affidavit, that the cause of

action arose in a single county, and not elsewhere:

And, for a similar reason, the Venue cannot be changed

in an Action against a Carrier or Lighterman, or for an

Escape, or False Return. Tidd. But in an Action for a

Label, the Court will change the Venue into a county

in which it was both written and published. And the

distinction seems to be, between a Label which is dis-
persed through several counties, and a Letter which is

written in one county, and opened in another; on the

former the Venue cannot be changed, on the latter it

may. See 3 Term Rep. 565, 652.

Though the Court in general will not change the

Venue, where it is laid in the proper county, yet they

will change it, even then, upon a special ground. Thus, in

Debt on Bond, where the Venue was laid in London,

and the plaintiff's and defendant's witnesses lived in

Lincolnsire, the Court changed it into the latter county.

1 Term Rep. 781; but see Id. 782; 1 Will. 162. And,

on the other hand, though the Court will in general

change the Venue, where it is not laid in the proper

county, yet if an impartial or satisfactory Trial cannot

be had there, they will not change it; as in an Action

for words spoken of a Justice of the Peace, by a

candidate, upon the hustings, at a county election.

Copp. 510.

So, where the Venue is not laid in the proper county,

the privilege of the plaintiff will, in some cases, prevent

the Court from changing it. Thus, in an Action brought

by a Barrister, Attorney, or other Officer of the Court,

if the Venue be laid in Middlesex, the plaintiff, suing

as a privileged person, has a right to retain it there, on ac-

count of the supposed necessity of his attendance on the

Court. But if the Venue be laid in any other county,

as in London; or the plaintiff sue as a common person,

by original or otherwife, or en nure droit, as executor

or administrator, or jointly with his wife or other per-

sons, he has no such privilege. And where a Barrister,

Attorney, or other Officer of the Court, is defendant, it

seems that he has not any privilege respecting the Venue.

Tidd's Pract. K. B. 3; and see this Dict. the Privilege 1.

When the cause of action arises in an English county,

where the Affises are regularly held, twice a year, it is

a matter of course to change the Venue into that county.

R. M. 155. § 5. But where the cause of action arises

out of the realm, the Court will not change the Venue,

because the action may as well be tried in the county

where the Venue is laid, as in any other where the cause

of action did not arise. And, in order to avoid delay,

the Court will not change the Venue, except by consent,

into a Northern county, where there are no Leet Affises,

in Michaelmas or Hilary Term; nor into Hall, Canterbury,

&c. where the Justices of Nisi Prius seldom come; nor

into the city of Worcestcr or Gloucester, out of the county

at large, because the Affises for the city and county at

large are held at the same place. Tidd.

Where the cause of action arises in Wales, and the

Venue is laid elsewhere, it cannot be changed, without

consent, into the next adjoining English county; because

the defendant cannot make the common affidavit, which

is never dispensed with, that the cause of action arose in

that particular county, and not elsewhere. And it has

been doubted, whether the Venue can be changed, other-

wise than by consent, directly into Wales; insomuch as

no Trial can be had there, but the issues (if any) must

be tried in the next adjoining English county; and if

the defendant let judgment go by default, it is doubtful

whether the Court can award a writ of inquiry. Tidd;

and see Stat. 13 Geo. 3. c. 51, §§ 1, 2. The Venue, how-

ever, has been frequently changed into the Counties Pal-

ate; because the Court can send down the record there by

Musters. And, it has even been changed into next

adjoining county, 12 Mod. 313: Tidd.

The motion for the defendant to change the Venue

is a motion of course; and must formerly have been

made within eight days after the Declaration delivered,

which was the time allowed by the Rules of the Court for

pleading. And accordingly it is said, that it a Declara-

tion be delivered so early in Term, that the defendant

has eight days in that Term, he cannot move to change

the
the Venue the next Term. But it is now settled, that the defendant may move to change the Venue, at any time before plea pleaded. R. M. 1654, § 5. And he is even allowed to change it, after an order for time to plead, though upon the terms of pleading insuffizibly; but not after an order for time to plead, where the terms are to plead insuffizibly, and take short notice of trial, at the first or other Sittings within Term, in London or Middlesex, because a trial would by that means be lost. And the Venue cannot be changed, in any case, after plea pleaded; even though the defendant afterwards have leave to withdraw his plea, and plead at assizes with a notice of set-off. Tidd's Pract.

In order to change the Venue, the defendant must make a positive affidavit, that the plaintiff's cause of action (if any) arose in the county of A., and not in the county of B. (where the Venue is laid) or elsewhere out of the county of A. R. M. 1654, § 5. An affidavit was necessary, because the motion succeeded, and was equivalent to a plea in abatement; and the form of the affidavit is always most strictly adhered to. Tidd's Pract.

Yet as it would be hard to conclude the plaintiff by the single affidavit of the defendant, he is at liberty to aver that the cause of action arose in the county where the Venue is laid, and to go to trial thereon at the same time that the merits are tried, by undertaking to give material evidence arising in that county. And, upon such undertaking, the Court will discharge the rule for changing the Venue. This practice is equivalent to joining issue, before alluded to, that the cause of action arose in the first county: And if the plaintiff fail in proving it, he must be nonsuited at the trial; which has, in this case, the same effect as qualifying the writ by a judgment on a plea in abatement, viz. quod est sic &c., and the plaintiff must begin again. 2 Saull 669.

Originally it was required, that the plaintiff should give no evidence at the trial but what arose in the county wherein the Venue was retained; and if he gave no such evidence, he must have been nonsuited of course. But when it was laid down (more liberally) that the plaintiff might lay his Venue in any county wherein part of the cause of action arose, he was then bound only to give some evidence, and not the whole, (dare aliquam evidentiam,) in the county where the Venue was laid; which continues to be the rule at this day. The evidence however must be material; and therefore it is not sufficient merely to prove that the witnesses to the contract reside in the county where the Venue is laid. Tidd's Pract. K. B. But where a rule to change the Venue from Middlesex to London was discharged, on the plaintiff's undertaking to give material evidence in Middlesex, the Court held, that the undertaking was complied with, by proving a Rule of Court, obtained by the defendant, in Middlesex, for paying money into Court, although that rule was obtained, after the rule for changing the Venue was discharged. 2 T. Rep. 275.

It was formerly held, that the plaintiff must move to discharge the Rule for changing the Venue, before Replication; and therefore that he came too late after issue was joined, and delivered to the defendant's agent. But now, as the plaintiff may alter his Venue, by moving to amend, so, for avoiding circuity, he may move to discharge the Rule for changing the Venue, or undertaking to give material evidence in the county where it is laid, at any time before the cause is tried; and it was accordingly discharged in one case, after the cause had been twice taken down for trial. C. L. E. 495.

Tidd's Pract. K. B.

VERDICT.

VERDICTUM; QUASI DICTUM VERITATIS.

The answer of a jury given to the Court, concerning the matter of fact in any cause committed to their trial, wherein every one of the twelve Jurors must agree, or it cannot be a Verdict: and the Jurors are to try the fact, and the Judges to adjudge according to the Law that arises upon it. 1 Inst. 216. See title Jury.

On a general Verdict, the jury were liable to be attained if they gave a false Verdict. To relieve them from this difficulty, it was enacted by Stat. Wm. 2, (13 & 14 Edw. 1.), c. 50, § 2, "That the Justices of the Peace shall not compel the Jurors to say precisely whether it be difficult or not, so as they state the truth of the fact, and pray the aid of the Justices; but if they will say, of their own accord, that it is difficult, their Verdict shall be admissible at their own peril." Upon this statute, it has become the practice for the Jury, when they have any doubt as to the matter of Law, to find a Special Verdict, stating the facts, and referring the Law arising thereon to the decision of the Court. See title Jury. 346.

In finding Special Verdicts, where the points are single and not complicated, and no special conclusion, the Counsel, if required, are to subscribe the points in question, and agree to amend omissions or mistakes in the meane conveyance, according to the truth, to bring the point in question to judgment. And unnecessary finding of deeds in bare verba, where the question rells not upon them, but are only derivation of title, ought to be spared; or they ought to be found shortly, according to the substance they bear in reference to the deed, as fee-simple, lease, grant, &c. It is also a general rule, that, in a Special Verdict, the Jury must find facts, and not merely the evidence of facts: And if in this, or any other particular, the Verdict be defective, so that the Court are not able to give judgment thereon, they will amend it, if possible, by the Notes of Counsel, or even by an Affidavit of what was proved upon the Trial: or, otherwise, they will supply the defect by awarding a Verdict de novo. Tidd's Pract. and the reference thereon.

If, at the prayer of a plaintiff or defendant, a Special Verdict is ordered to be found, the party praying it is to prosecute the Special Verdict, that the matter in Law may be determined; and if either party delay to join in drawing it up, and pay his part of the charges, or if the Counsel for the defendant refuses to subscribe the Special Verdict, the party desiring it shall draw it up and enter it ex parte. Where the parties disagree, or the
VERDICT.

Special Verdict is drawn contrary to the notes agreed upon, the Court on motion will rectify it; and the Court may amend a Special Verdict, to bring the Special Matter into question. 2 Lil. Abr. 645; 6, 653.

In all cases and all actions, the Jury may give a General or Special Verdict; and the Court is bound to receive it, in part or in toto; and if the Jury doubt, they may refer themselves to the Court, but are not bound to do so. 3 Salk. 573.

A Special Verdict (see title Jury III.) has this advantage over a General Verdict, that it is attended with much less expense, and obtains a much swifter decision; the Officer being aided in the hands of the Officer at Nisi Prius till the question is determined; and the Verdict is then entered for the plaintiff or defendant, as the case may happen. But as nothing appears upon the record, except the General Verdict, the parties are precluded hereby from the benefit of a Writ of Error, if dissatisfied with the judgment of the Court or Judge, in point of Law; which makes it a thing to be wished, that a method could be devised of either lengthening the expence of Special Verdicts, or of entering the same at length upon the record. 3 Comm. c. 23.

Where there is a Special Verdict, the plaintiff's Attorney generally gets it drawn from the Minutes taken at the trial, and settled by his Counsel, who signs the draft. It is then delivered over to the opposite Attorney, who gets his Counsel to peruse and sign it; and when the Verdict is thus settled and signed, it is left with the Clerk of Nisi Prius in a town cause, or with the Officer in the country, who makes copies for each party. The whole proceedings are then entered, docketed, and filed of record; after which a concilium is moved for, a rule drawn up thereon with the Clerk of the Rules, the cause entered with the Clerk of the Papers, copies of the record made and delivered to the Judges, and Counsel instructed and heard, in like manner as upon arguing a demurrer; only that a Special Verdict must be set down in the paper for argument, within four days, and cannot be set down afterwards without leave of the Court. After judgment given, the prevailing party is immediately entitled to tax his costs, and take out execution, without giving a four-day rule for judgment; but the other party may have a rule to be present at taxing costs.

Thid. Pract. 2; see Sellin's Pract.

In a Special Cafe, as in a Special Verdict, the facts proved at the trial ought to be stated, and not merely the evidence of facts. It is usually dictated by the Court, and signed by the Counsel, before the Jury are discharged; and if, in setting it, any difference arises about a fact, the opinion of the Judge is taken, and the facts stated accordingly. For the argument of a Special Case, the same steps must be taken, as for that of a Special Verdict, except that it is not entered of record.

Thid. Pract. When a Special Cafe is referred, the Verdict ought always to be for the plaintiff, and the rule of Nisi Prius ought to be to the following effect: That if the Court should be of opinion for the defendant, then judgment of Nonuen should be entered; otherwise, the defendant could have no remedy in case of the plaintiff's death. Barn. 460: Sellin's Pract.

If a Special Verdict in a Criminal Cafe do not sufficiently ascertain the facts, a Verdict de novo ought to issue. Skin. 667; Ld. Raym. 1524; for a Special Verdict ought not to be amended in Criminal Cases, Ld. Raym. 141; unless there are unobjectionable minutes to amend it by. See Str. 514, 1197: And in Forfery, a Special Verdict has been amended where the fault was committed by the defendant. Str. 844. If a Special Verdict find only part of the matter in issue, or do not take in the whole issue, or if the imperfect is such that judgment cannot be given, it is bad. Ld. Raym. 1522; C3. Fac. 31. But if there be several issues, and the Jury only come to them, the Court may give judgment. Str. 845. For, in a General Verdict on several counts, if any one of them is good, it is sufficient in Criminal Cases. Salk. 514: Doug. 750.

A Juryman withdrawing from his Fellow, or keeping them from giving their Verdict, without giving good reason for giving it, shall be fined; but if he differs from them in judgment, he shall not. Dur. 55. If one of the Jury that found a Verdict, were outlawed at the time of the Verdict, it is not good: And where a Verdict is given by thirteen Jurors, it is held to be a void Verdict; because no Attaint will lie. 2 Lil. 645, 650. If there be eleven Jurors agreed, and one dissenting, the Verdict shall not be taken, nor the Refusor fined, &c. Though it is said, anciently, it was not necessary, that all the Twelve should agree in civil causes. 2 Hale's Hist. P. C. 257.

In capital cases, a Verdict must be actually given; and if the Jury do not all agree upon it, they may be carried in carts after the Judges, round the Circuit, till they agree; and in such case they may give their Verdict in another county. 1 Ray. 237, 281, § 353. If the Jury acquit a person of an Offence against evidence, the Court, before the Verdict is recorded, may order them to go out again and reconsider the matter; but this hath been thought hard, and of late years is not so frequently practised as formerly. 2 Hale's Hist. P. C. 47, § 11.

In case a Jury acquits a man upon trial against full evidence, and being sent back to consider better of it, are peremptory in and hand to their Verdict, the Court must take it, but may repel it upon judgment upon the acquittal: And here the King may have an Attaint: And if the Jury will, by Verdict, convict a person against or without evidence, and against the opinion of the Court; they may reprove him before judgment, and certify for his pardon. 2 Hale's Hist. P. C. 310.

If the fact upon which the Court was to judge, be not found by the Verdict, a new Verbre facer may be granted. 1 Rol. Abr. 593. A Verdict being given where no issue is joined, there can be no judgment upon it; but a replessor is to be had. Mod. Ca. 4. And if a Verdict be ambiguous, insufficient, repugnant, imperfect, or uncertain, judgment shall not pass upon it. 1 Saw. 154, 155. See title Verbre facer de Novo.

Verdicts must in all things directly answer the issue, or they will not be good; and if a Verdict finds only part of the issue, it may be ill for the whole. 3 Salk. 374. But there is a difference between actions founded on a wrong, and on a contract; for where it is founded on a wrong, as on a trespass, or omissions, &c., it is maintainable if any part of it is found: So in debt for rent, a less sum than demanded may be found by the Verdict, because it may be apportioned; but where an action is founded on a contract, there it is entire, and otherwise.

2 Chae.
Verdict.

If several persons are indicted, or jointly charged in an information, a Verdict may find some of the defendants guilty, and not others. And if the substance of an issue be found, or so much as will serve the plaintiff's turn, although not directly according to the issue, the Verdict is good. 1 Lew. 142; Hob. 73: 1 Med. 4. Where only two are found guilty of a Riot, which cannot be committed by less than three,) or only one found guilty of a Conspiracy, (to which two at least are required,) they having in both cases been indicted with others, judgment shall be given against them, even though the others who were indicted do not come to trial. Stru. 193, 1237. So where six were indicted for a Riot, and two died before trial, two were acquitted, and two only found guilty, judgment was given: For they must have been found guilty with one or both of those who had not been tried, or it could not have been a Riot. 20 Lev. 1262.

If the Jury find the issue and more, it is good for the issue, and void for the residue: And where a Jury find a point in issue, and a superfluous matter over and above, that shall not vitiate the Verdict. 2 Lew. 253. Yet if a man brings an action of Debt, and declares for 20l. and the Jury, upon nil debet pleaded, find that the defendant owed 40l. this Verdict is ill; For the plaintiff cannot recover more than he demands; and in this case he may not recover what he demands, because the Court cannot, by reason of his judgment from the Verdict. 3 Salt. 376. See title Debt.

A Verdict found against a Record, which is of a higher nature than any Verdict, is not good: But where a Verdict may be any ways continued to make it good, it shall be so taken, and not to make it void. 2 Litt. 644, 651. Upon a General issue, a Verdict which is contrary to another record, may be allowed; but not where the Verdict found is against the same record upon which it is given. Dyor 300. A Verdict against the confession of the party, is void: But it has been held, that the Verdict may be good in the disjunctive, though it be not formal; but if it find a thing merely out of the issue, it is not good. Leg. Cent. 257: Hob. 53, 54. Where the Jury begin with a direct Verdict, and end with Special Matter, &c. that shall make the Verdict: Also if they begin with any Special Matter, and after make a general conclusion upon it, contrary to Law; the Judges will judge of the Verdict, according to the Special Matter. Hob. 53.

No Verdict will make that good, which is not so by Law, of which the Court is to judge; judgment is to be given on Verdicts, that stand with Law; and what both parties have agreed in the pleading, must be admitted so to be, though the Jury find it otherwise, it being a rule in Law. Hob. 112: 2 Lew. 678: 2 Med. 49. As Common Law, where any thing is omitted in the Declaration, though it be matter of substance, if it be such as, without proving it at the trial, the plaintiff could not have had a Verdict, and there be a Verdict for the plaintiff, such omission shall not arrest the judgment. This rule, however, is to be understood with some limitation; for, on looking into the cases, it appears to be, that where the plaintiff has stated his title, or ground of action, defectively, or inaccurately, (because, to entitle him to recover, all circumstances necessary, in form or substance, to complete the title so imperfectly stated, it must be proved at the trial,) it is a fair presumption, after a Verdict, that they were proved; but that, where the plaintiff totally omits to state his title or cause of action, it need not be proved at the trial, and therefore there is no room for presumption. And hence it is a general rule, that a Verdict will aid a title defectively let out, but not a defective title. Thus, where the grant of a reversion is stated, which cannot take effect without aquration, that, being a necessary ceremony, may be presumed to have been proved. But where, in an action against the debtor of a bill of exchange, the plaintiff did not allege a demand on and refusal by the acceptor, when the bill became due, or that the defendant had notice of the acceptor's refusal, this omission was held to be error, and not cured by the Verdict: For, in this case, it was not requisite for the plaintiff to prove, either the demand on the acceptor, or the notice to the defendant, because they were neither laid in the declaration, nor were they circumstances necessary to any of the facts charged. Dons. 679. See Titl. Prnrti. Another rule at Common Law is, that surpluseg will not vitiate after Verdict; sed per invitate non vitatur: And therefore, in Trover, if the plaintiff declare that on the 3d of March he was possessed of goods, which came to the defendant's hands, and that afterwards, to wit, on the 1st of March, he converted them to his own use: This is cured after Verdict; for that he afterwards converted them is sufficient, and the f. is void. Cro. Jor. 428: Titl. Prnti.

The Statute of Jealouls helps, in certain cases, after Verdict; as it supposes the matter left out was given in evidence, and that the Judge directed accordingly. 1 Med. 297. See title Amendment.

Where a Verdict is found for the plaintiff, and he will not enter it, the defendant may compel him to do it, on motion; or the defendant may enter it himself. 2 Litt. After a Verdict is returned into Court, it cannot be altered, but if there be any misprision, it is to be foggested before: And a mistake of the Clerk of the Affairs appearing to the Court, was ordered to be amended. Cro. Eliz. 112, 150. See title Amendment.

Vercundium. Is specially used for injury done to any one. Somner of Groundkind, pag. 174.

Vere, or Virge, Virige. [Friseta.] The compact of the King's Court which bounds the jurisdiction of the Lord Steward of the Household; and that seems to have been twelve miles about. Stat. 13 R. 2. cap. 3; Britton 68: F. N. B. 24. See lit. Palace; Marsfielda. There is also a Vere of Land; which is an uncertain quantity directed by the custom of the country, from 15 to 30 acres. See title Yard-Land. 2d Ed. 1. The word Vere has also another signification, of a tick or rod, whereby one is admitted tenant to a copyhold estate. Old Nat. Br. 17. See title Copyhold.

Vergers, Virgers. [Firgutters.] Are such as carry white wands before the Judges. Petas. lib. 2. cap. 39. Otherwise called Partitores Virgus.

Veronica. It is a piece of ancient superstition, that as our Saviour was led towards the Cross, the likeness of his face was formed on his handkerchief in a miraculous manner: This handkerchief is pretended to be still preserved in St. Peter's Church at Rome, and called Veronica. Mai. Paris. Anm. 1216, pag. 514: Brump. 121.
VERT, Fr. Veedd. I. e. Veridit, otherwise called Green-bay. In the Forest Laws signifies every thing that beareth a green leaf within a forest, that may cover a deer; but especially great and thick coverers. Of Vert there are divers kinds; some that bear fruit, which may serve for food, as chestnut-trees, service-trees, nut-trees, crab-trees, &c. And for the shelter of the Game, some are called Haut-boys, (high-wood,) serving both for food and browse; also for the defence of them, as oaks, beeches, &c. and for shelter and defence, such as ashes, poplars, maples, alder, &c. Of Sub-boys, (underwood,) some are for browse and for food of the Game; of butcher and other vegetables, some are for food and shelter, as the hawthorn, blackthorn, &c. And some for hiding and shelter, such as braken, gate, heath, &c. But herbs and weeds, although they be green, our legal Vert extendeth not to them. 4. Jus. 737.

Many woods divide into Vert and non Vert. The Vert-vert is that which the Law-books term haut-boys; and non Vert, they call jid-boys: And into Special-vert, which is all trees growing within the forest that bear fruit to feed deer; called special, because the destroying of it is more grievously punished than of any other Vert. Manw. par. 2, pag. 33. Vert is sometimes taken for that power which a man hath by the King's grant to cut green-wood in the forest. See title Forest.

VERVIVE, A kind of cloth, mentioned in flat. 1 K. 3. c. 8.

VERVIE, Lord and Very Tenant; Verus Dominus & Verus Tenens.} They that are immediate lord and tenant one to another. Broke. See Old Nat. Br.; and title Tenure.

VEST, Vesture.] To invest with, to make polish of, to place in position. Planum poffiJtium tertio vel pra­dii iudicato, legem dare, indecadre Spelman.


VESTED, Edatas; See titles Estate; Remainder; Vested Legacies. See Legacy.

VESTRY, see tit. Church I. 1. A Place or Room adjoining to a church, where the Vestments of the Minifter are kept; also a meeting at such place: Hereinafore the Bishop and Priests sat together in Vestry, to consult of the affairs of the Church; in resemblance of which ancient custom, the Ministers, Churchwardens, and chief men of most parishes, do at this day make a Parish Vestry. And, in general, a person is chosen in every Parish to act as Vestry Clerk, whose duty is to attend at all Parish meetings, to draw up, and copy all orders and other acts of Vestry, and to give out copies thereof, when necessary; for which purpose he has the custody of all books and papers relating thereto. The Sunday before a Vestry is to meet, public notice ought to be given either in the church after divine service is ended, or at the church-door as the parishioners come out, both of the calling of the said meeting, and also of the time and place of the assembling of it; and it ought also to be declared for what business the said meeting is to be held, that no one may be surprized, but that all may have full time before to consider of the subject-matter of the meeting. It is also usual to tell one of the church bells for half-an-hour preceding the time when the Vestry is to assemble, in order to remind the parishioners of the appointed time. See 5 Mod. 65; La. 21: Hal. 61: Lidt. 26: Poph. 137: 1 Mod. 194: 2 Vest. 167: Burn. Ecl. L.

Every parishioner who is afflicted to, and pays the church rates, or foot and lot, is, of common right, entitled to be admitted into a General Vestry, and to give his vote therein. Thus where Pfullbrug, an inhabitant and parishioner, paying foot and lot in the parish of St. Botolph, Bishops-gate, in London, was excluded from the Vestry-room of that parish by Ryland, the churchwarden, he brought his action for this injury, and, on a demurrer to the declaration, it was held that the Guild was the only right, and therefore the exclusion was neither an injury or damage to Pfullbrug, but that, admitting the flushing of the door against him and keeping him out was a damage, yet it was no more than a public damage, for which no Action would lie. But on the other side, it was contended that every inhabitant has a right to be present at such meetings, and give his vote: And the Court made no difficulty but that such an Action was maintainable; but they gave judgment for the defendant, because it was not stated in the declaration that the parishioners had a right to hold their Vestry in this room; for that in an Action of this nature, the plaintiff must first show a Right in the thing claimed, and then a Disturbance in the enjoyment of it. 2 Ld. Raym. 138: 1 Stra. 624: 3 Mod. 52, 351.

The Rector, Vicar, or Curate also have a right to be admitted into the Vestry, and to vote upon the question therein proposed, although not entitled to the church rates.

So also, all Out-dwellers, occupying land in the parish, have a right to vote in the Vestry as well as the inhabitants. Burn. Ecl. L.

When the parishioners, thus qualified, are assembled at the time and place appointed, those who are present include all those who are absent, and the votes of the major part of those present bind all the rest. Vest. 267.

The persons assembled at a Vestry being all upon an equal footing, the power of adjourning it does not reside singly in the minister, or in any other person as chairman, but in the whole assembly; for inter paries non est potestas: and therefore the adjournment, as well as every other act of the Vestry, must be decided by the majority of votes. 2 Stra. 1045.

To prevent disputes, it may be convenient that every Vestry Act be entered in the Parish Books of Accounts, and that every man's hand writing, be set thereon. Burn. Ecl. L.

SELECT VESTRIES.—In large and populous parishes, especially in and about the Metropolis, a custom has obtained of yearly choosing a select number of the chief and most respectable parishioners to represent and manage the concerns of the parish for one year; and this has been held to be a good and reasonable custom. 2 Pint. 5: Lat. 1227: Burn. Ecl. L.

It seems also to have been held a good and reasonable custom to choose a certain number of parishioners as a Select Vestry; and that as often as any one of the members die, the rest shall choose one other fit and able parishioner of the same parish to fill up the vacancy of him.
Vest

is deceased; but this can only be supported upon the
baus of prescription, and constant immemorial usage.

The customs, however, differing in different parishes
as to the election, government, and proceedings of See-
cest Vestries, it is engrafted by the 10 Stat. c. 11,
420, for building fifty new churches in or near London
and Westminster, that the Commissioners shall appoint a con-
venient number of sufficient inhabitants to be Vestry-
men, and from the time to time, upon the death, removal,
or other voidance of any such Vestry-man, the reft, or
majority of them, may choose another.

In several private Acts for building particular churches,
the Legislature has described the perions of whom the
Select Vestry shall respectively consist. Thus, in Spittal-
fields, by Stat. 2 Geo. 2. c. 10, the Rector, Church-
wardens, Overseers, and all other persons who have
served or held for those offices, shall, so long as they
continue householders within the parish, pay the
Poor-rate, be Vestry-men of the said parish for the time
being, and have the management of the affairs of the
parish.—So also, in the parish of Wapping Secancy, by
Stat. 2 Geo. 2. c. 30, the Rector, Churchwardens,
Overseers, and all other persons who shall pay two shillings
or more, towards the relief of the Poor, and no
other, shall be Vestry-men of the said parish.

A Vestry was called to consider about building a Work-
houses, where it was agreed to, and to borrow money for
that purpose: And that whoever should be bound for it
should be indemnified by the parish. This order was con-
formed by another, and both signed by the Vicar and Sev-
eral of the Inhabitants, 1801. being the sum agreed
upon, was borrowed of A. to whom B. gave bond for
it. An order of Vestry was made for raising the money,
but, upon appeal to the Quarter Sessions by some new pa-
rihioners, was quashed. B. was sued for the bond, and
paid the money, and then brought a bill for relief. And
the Master of the Rolls decreed him his principal, in-
terest, and costs at Law, and in Chancery; and that the
defendants the Vicar, Churchwardens, and Overseers of
the Poor, call a Vestry to make a rate for payment; and
if the inhabitants refuse payment, the plaintiff to be at
liberty to apply to the Court: And said that he did not
see why the Court might not as well compel those who
are not parties to pay the rates; as order tenants, though
not parties, to pay the rates; and because the defendants
had put in a fair answer, their costs were decreed to be
raised by the same rate; but said, that if those who had
appealed to the Quarter Sessions had been before the
Court, they should have paid all the costs. 2 P. Wms.
352. See 2 F. A. &. p. 428.

Ve pursuits. A crop of Grains or Corn; an
allowance of some sort of the produce of the earth,
as Corn, Grains, Wood, &c. for part of the salary or wages
to some officers, servant, or laborer, for their livery or
veld. So Foresters had a certain allowance of timber and
underwood yearly out of the Forrest for their own use.

Ve сту от, A Garment; metaphorically applied in
Law to a poftillion or jennis. Stat. Willm. 2. c. 5. Veiture
of an Acre of Land is the profit of it; "It shall be in-
quired how much the Vesture of an acre of ground is
worth, and how much the land," Ed. 4. Ed. 17: 14 Ed. 3.
By grant of Veitur terra, the soil will pass; and the
Veitur being the profit of land, it is generally all one
to have that, as the land itself. 1 Vict. 327. 2 Roll. Abr. 2.
Ve situm namium. See Namim Vettium
Restraint; Withernam.

Via Militaris. A Highway. Bract. 1. 4. c. 16
par. 1. Fleta, lib. 4. c. 6. par. 3.

UfING. The Kings of the East Angles were so
term'd; from King Ufea, who lived in the year 578.
Mus. Weli.

Via Regia. The Highway or common road, called
the King's Way, because authorized by him, and under
his protection: It is also designated Via Militaris.
Leg. Hen. 1. c. 80; Bract. lib. 4. See tit. Highway.

Vicar, Vicarius, quae vice eunent Rectoris.] The
Priest of every parish is called Rector, unless the predial
tithes are appropriated, and then he is styled Vicar; and
when Rectories are appropriated, Vicars are to supply
the Rectors' places. See title Parson 1. Where the Vicar
is endowed, and comes in by institution and induction,
he hath curam animorum administration; and is not to
be removed at the pleasure of the Rector, who in this
case hath only curam animorum administration; but where
the Vicar is not endowed, nor comes in by institution
and induction, the Rector hath curam animorum administration,
and may remove the Vicar. 1 P. 15; 3 East. 358.

Upon endowment, the Vicar hath an equal, though
not to great an interest in the church as a Rector; the
freewill of the church, church-yard, and glebe is in him;
and as he hath the freewill of the glebe, he may prescribe
to have all the tithes in the parish, except those of Corn,
&c. Many Vicars have a good part of the great tithes;
and some Benefices, that were formerly fevered by im-
propriation, have, by being united, had all the glebe
and tithes given to the Vicars; But tithes can no other-
way belong to the Vicar than by gift, composition, or
prescription; for all tithes de jure appertain to the Parson;
and yet generally Vicars are endowed with glebe and tithes,
especially small tithes, &c. If a Vicar be endowed
of small tithes by prescription, and afterwards land,
which had been arable time out of mind, is altered,
and there are growing small tithes thercon, the Vicar
shall have them; for his endowment goes to such tithes, in
any place within the parish. Cro. Eliz. 467; Hob. 39.
But where the Vicar is endowed out of the Parishionage,
he shall not have tithes of the Parson's glebe, or of land
that was part thereof: at the time of the endowment,
but now severed from it: Yet it seems to be otherwise, if the
glebe lands are in the hands of the Parson's lessee.
Cro. Eliz. 479; Maller. 2 Impet. 4. See title Tithes.

Vicarage, Vicariar.] Of places did originally be-
long to the Parsonage or Rectory, being derived out of it
The Rector of common right is patron of the Vicar-
age; but it may be settled otherwise; for if makes
a lease of his Parsonage, the patronage of the Vicarage
passes as incident to it. 2 Roll. Abr. 59. And if a Vicar
become void, during the vacancy of the Parsonage,
the Patron of the Parsonage shall present to such Vicar-
age, 19 Eliz. 2. 41. If the profits of the Parsonage
or Vicarage fall into decay, that either of them by in-
selves is not sufficient to maintain a Parson and Vicar, they
ought again to be reunited: Also, if the Vicarage be
not sufficient to maintain a Vicar, the Bishop may com-
pel the Rector to augment the Vicarage. 2 Roll. 337
Part.
VICARIAL TITHES. Privy or small Tithes. See title Tithes.

VICARIO deliberando Occasioni ejusdem Recognitionis, &c. An ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, &c. mentioned in Reg. Orig. 147.

VICE-ADMIRAL, An under Admiral at sea; or Admiral on the coast, &c. See title Admiral.

VICE-ADMIRALTIES COURTS; See title Admiral.

VICE-CHAMBERLAIN, A great Officer next under the Lord Chamberlain; who, in his absence, hath the rule and control of all Officers appertaining to that part of his Majesty's Household, which is called the Chamber above Stairs. Stat. 15 H. 7.

VICE-CONSTABLE OF ENGLAND, An officer whose office is set forth in Pat. 22 Edw. 4. See title Constable.


VICE-DOMINUS EPISCOPUS, The Vicar-general, or Commisary of a Bishop. Blunt.

VICE-GERENT, A deputy or lieutenant. Stat. 31 H. 8. c. 10.

VICE-MARSHAL, Is mentioned with Vice-Comblable in Pryn's Antid. ou 4 Isr. 71.

VICE-ROY, See REV. The King's Lord Lieutenant over a Kingdom, in Ireland.


VICIS ET VENELLIS MUNDANDIS, An ancient writ against a Mayor or Bailiff of a town, &c. for the clean keeping of their streets. Reg. Orig. 267.

VICOUNT, or VISCOUNT, Vicarost. Signifies as much as Sheriff. Between which two words, there seems to be no other difference, but that the one comes from the Norman, the other from our ancestors the Saxons; of which, see Sheriff. Vicount also signifies a degree of Nobility next to an Earl, which Camden (Britton, pag. 176.) says, is an old name of office, but a new one of dignity, never heard of among us, till Henry VI. who, in his eighteenth year in Parliament, created John Lord Beaumont, Vicount Beaumont; but far more ancient in other countries. See Selden's Tit. H. 711; and this Dictionary, title Peer of the Realm I.

VICONTIUS, or VICONTIEL, An adjective, from Vicount, and signifies any thing that belongeth to the Sheriff; as, Writs Vicontiels are such Writs as are triable in the County or Sheriff's Court; of which kind there are divers Writs of Nuance, &c. mentioned by Finkenbert. Old Nat. Brev. 109: F. N. B. 184.

Vicontials are certain sums, for which the Sheriff pays a rent to the King, and he makes what profit he can of them. Vicontiel Rents usually come under the title of forma conditionis: of these the Sheriff hath a particular roll given in to him, which he delivers back with his accounts. See flatus 34 & 35 H. 8. c. 16; 2 & 3 Ed. 6. c. 22: 22 Car. 2. c. 6; this Dict. title Sheriff; and Hale's Sheriff's Act. 49.

VICONTIEL JURISDICTION, That Jurisdiction which belongs to the Officers of a County; as to Sheriffs, Coroner, Eichers, &c.

VICTUALS, Vittus.] Sustenance, things necessary to live by, as meat and provisions. Victuallers are those that sell Victualls; and we call now all common alehouse-keepers by the name of Victuallers. Victuallers shall sell their Victualls at reasonable prices, or forfeit double value: Victuallers, Fishmongers, Poulterers, &c. coming with their Victualls to London, shall be under the governement of the Lord Mayor and Aldermen; and sell their Victualls at prices appointed by Justices, &c. See flatus 25 Edw. 3. c. 6: 31 Edw. 3. c. 10: 7 R. 2. c. 11: 13 R. 2. & 3. 1. 8. No person during the time that he is a Mayor, or in office in any town, shall sell Victualls, on pain of forfeiture, &c. But if a Victualler be chosen Mayor, whereby he is to keep the Affise by Statute, two different persons of the same place, who are not Victuallers, are to be sworn to affise Bread, Wine, and Victualls, during the time that he is in office; and then, after the price assailed by such persons, he shall be lawful for the Mayor to sell Victualls, &c. See Stats. 6 R. 2. c. 9: 3 H. 8. c. 8.—If any one offend against these Statutes, the party grievous may sue a writ directed to the Justices of Assise, commanding them to lend for the parties, and to do right; or an attachment may be had against the Mayor, Officer, &c. to appear in B. R. In some manors they choose yearly two Surveyors of Victualls, to see that no unwholsome Victualls be sold, and deliver such as are corrupt. 1 Edw. 20. The rates of Victualls in all places, except Corporations, shall be assailed by the King's Justices, &c. by proclamation. Victualls are not to be transported. Stat. 25 H. 8. c. 2. These ancient acts seem now totally disregarded, though the provisions in some of them are not unworthy attention. See further, titles Forfailing; Monopoly; Regrading; Navigation Acts, &c.

VIDAME; See Varrofors; Vice-Dominus.

VIDELICET; See Sicutet.

VIDUITATIS PROFESSIO, The making a solemn profession to live a lord and chaste widow; which...
was heretofore a custom in England. Dogd. Warwicksh. 3. 3. 654.

VIDIMUS; See Inventories.

VI ET ARMIS. With force and arms. Words used in indictments, &c. to express the charge of a forcible and violent committing any crime or trespass. Where the omission of Viet armis, &c. is helped in indictments, see St. 4 & 5 Ann. c. 16; and this Dictionary, title

Inhabitants.

VIB.W, Fr. Proc. i.e. Vifus. Originally, where a real action was brought, and the tenant did not know certainly what was in demand, he might pray that the Jury might view it. Britton, c. 43; F. N. B. 178.

This View was for the Jury to see the land or thing claimed, and in controversy: Formerly, a View was not granted in personal actions; and see St. 13 E. 1. c. 48, which restrains it in certain real actions. At present, in actions of Waite, Trespass, quare clausum frigint, Ejection, and other actions where a View appears to the Court to be proper and necessary, that the Jurors, whether common or special, who are to try the issues, may, for the better understanding of the evidence, have the View of meagles, lands, or place in question, the Court is authorized by St. 4 & 5 Ann. c. 16 § 3, "to order special writs of dyvingas or holinea regit. by which the Sheriff or other officer, to whom they are directed, shall be commanded to have fixed out the first twelve of the Jurors named in such writs, or some greater number of them, at the place in question, some convenient time before the trial, when they shall have the matter in question shown to them, by two persons in the Said writs named, to be appointed by the Court, and the said Sheriff or other officer, who is to execute the said writs, shall, by a special return upon the same, certify that the View hath been had, according to the command of the said writs."

And, by St. 3 Geneva. c. 25. § 14. "where a View shall be allowed in any cause, in such case, the Jurors named in such Panel, or more, who shall be mutually chosen by the parties, or their agents on both sides, or, if they cannot agree, shall be named by the proper officer of the respective Courts of King’s Bench, &c. for the causes in their respective Courts, or, if need be, by a Judge of the respective Courts where the cause is depending, or by the Judges or Judges. before whom the cause shall be brought to trial respectively, shall have the View, and shall be fairly sworn, or such of them as appear, upon the Jury to try the said cause, before any cause as directed by the Act; and so many only shall be drawn, to be added to the Viewers who appear, as shall, after all defaulters and challenges allowed, make up the number of twelve, to be sworn for the trial of such cause." See title Jure.

Before the St. 4 & 5 Ann. c. 16, there could be no View, till after the cause had been brought on to trial; when, if the Court saw the question involved in any obscurity, which might be cleared up by a View, the cause was put off, that the Jurors might have a View before it came on again. Upon this statute, it had become the practice to grant a View of course, upon the motion of either party; and a motion having prevailed, that fix of the first twelve, upon the Panel, must attend upon the View, and that if they did not appear at the trial, the cause must be put off, Lord Mansfield, and the rest of the judges, thought it their duty to interfere, and to take care that their ordering a View should not obtrude the course of justice, and prevent the cause from being tried; for they were all clearly of opinion, that the act of Parliament meant that a View should not be granted, unless the Court was satisfied that it was proper and necessary; and they thought it better, that a View should be tried upon a View had by any fix, or by fewer than six, or even without any View at all, than that the trial should be delayed for a great length of time. Accordingly they resolved, not to order a View any more, without a full examination into the propriety and necessity of it, unless the party applying would come into such terms, as might prevent an unfair use being made of it. Agreeably to this resolution, they required a consent, which has ever since been made a part of the rule, that in case no View he had, or if a View be had by any of the Jurors, though not six of the first twelve, yet the trial shall proceed, and no objection be made on either side, on account thereof, or for want of a proper return to the writ. 1 Burr. 2535. 7.

Inactions of Waite, and Trespasses quare clausum frigint, the necessity for a View appearing on the face of the pleadings, the motion for it is a motion of course, requiring only Council’s signature; upon which a rule of Court is drawn up in the Term-time, or a Judge’s order in Vacation. But, in the other, a special application must be made, in the usual order, to the Court or a Judge, upon an affidavit of the circumstances; and it is always made a part of the rule or order, that the expenses of taking the View shall be equally borne by both parties, and that no evidence shall be given on either side, at the time of taking thereof. Before the rule or order is drawn up, an application should be made to the opposite Attorney, for the name of his Sheriff, and the names of both Sheriffs must be inserted in the rule or order, and also in the writ, with the time and place of meeting for proceeding on the View. The rule or order being drawn up, a copy of it must be served on the opposite Attorney, and the original left with the Sheriff, together with the names of the Jurors, if special, and he will summon them; if common, he will summon such as he thinks proper. Titre’s Pract. 340 P. 419.

Where, in action of Waite, several places are assigned, and the Jury hath not the View of some of them, they may find no Waite done in that part which they did not view. In Waite for wanting of Wood, if the Jury view the Wood without entering into it, it is good; also Waite being assigned in every room of an house, the View of an house generally is sufficient. 1 Lea. 259, 267. If a rent or common is demanded, the land cut off which is issue must be put in View. 1 Lea. 50. And if a View be denied, where it ought to be granted, or granted where it ought not to be, &c. it is error. 2 Lea. 217. So a View may be on indictment for a Nuisance. See Nuisance.

VIEW of FRANK-PLEDGE; See title Frank-Pledge.

VIGIL, Vigilia. ] The eve, or next day before any solemn feast; because then Christians were wont to watch, fall, and pray in their churches. Stat. 2 55 El. 6. c. 19.

VI LAICA REMOVENDA, A writ that lies where two Parties contend for a Church, and one of them enters into it with a great number of Laymen, and holds out the other so et armis; then he that is holden out shall have this writ directed to the Sheriff, that he remove the force, but the Sheriff ought not to remove the Incumbent out of the Church, whether he is there by right or wrong, but only the force. F. N. B. 34; 3 Lea.
VILLANOUS JUDGMENT, Villiamus Judicium.] Is that which calls the reproach of Villain and shame upon him against whom it is given, as a Conspirator, \\
&c. And the judgment in such a case shall be like the ancient judgment in Attalit, excus. That the offender shall not be of any credit afterwards; nor shall it be lawful for him to approach the King; Courts; and his lands and goods shall be seised into the King's hands, his trees rooted up, and body imprisoned, &c. Stewart, P. C. 177: 61 Emb. 63. The better opinion is, that the Villainous Judgment is now by dilate become obsolete, not having been pronounced for some ages; though the punishment at this day appointed for Perjury may partake of the name of Villainous Judgment, as it hath somewhat more in it than corporal or pecuniary pain, \\n
VILL, or VILLAGE, Villa.] Is sometimes taken for a Manor, and sometimes for a Parish, or part of it: But a Vill is most commonly the outside of a Parish, consisting of a few houses; and, as far as these are separate from it, Villa, oft or plures dominus, vicinatum, & collata, or plures vicinis. 1 Inst. 115: Fleta mentions the difference between a Mansion, a Village, and a Manor, ex. A Manor may be of one or more houses, but it must be but one dwelling-place, and none near it; or, if other houses are contiguous, it is a Village; and a Manor may consist of several Villages, or one alone. Fleta, lib. 6. c. 5. According to Fleta, the boundaries of Villages are not houses or places, but by a circuit of ground, within which there may be hamlets, woods, and waste ground, &c. 2 Forst. de L. i. Aug. c. 24. The word Town, or Vill, is now, by the alteration of times and language, become a general term; comprehending under it the several species of Cities, Boroughs, and common Towns. 1 Comm. Intraur. § 4.

When a place is named generally, in legal proceedings, it is intended to be a vill, because, as to civil purposes, the Kingdom was first divided into Villae; and it is never intended a Parish, that being an ecclesiastical division of the kingdom to spiritual purposes, though, in many cases, the Laws takes notice of Parishes as to civil purposes. 1 Mdl. 250. If no Vill, &c. is alleged, where a mediate and lands lie, no trial can be had concerning it; but some Counties in the north of England, and in Wales, have no Vills but Parishes. Trend. Comm. 33, 378. A Villain a Parish by intent only shall be all one; and in process of appeal, a Parish may be intended a Vill. 1 Cro. 167: 2 Salk. 380: If a Venue be laid in Gray's Inn, which is no Parish or Vill, the defendant must plead there is no such Vill as Gray's Inn, or it shall be intended a Vill after verdict, &c. 3 Salk. 351. Two houses in an extraprochial place are not enough to denominate a Vill. 2 Siri. 1001, 1071. See titles Poor I. 1: City; Towns.

VILLA REGIA, A title given to thefe Country Villages where the Kings of England had a Royal Seat, and held the manor in their own demesne, having there commonly a free chapel, not subject to ecclesiastical jurisdiction. Pareto, Antiq. 55.

VILLAIN, VILLAIN, Villanus, Fr. Villain, i.e. Vills.] A man of base or servile condition, a Bondman, or Servant. Of these Bondmen or Villains there were two sorts in England; one termed a Villain in Grofs, who was immediately bound to the person of the Lord, and his heirs; the other, a Villain Regardant to a Manor, being bound to his Lord as a member belonging and annexed to a manor, whereas of the Lord was owner. And he was properly a pure Villain, of whom the Lord took redemption to marry his daughter, and to make him free; and whom the Lord might put out of his lands and tenements, goods and chattels, at his will, and chaslie, but not main him: For if he mained his Villain, he might have appeal of Maihem against the Lord; as he could bring appeal of the death of an inferor against his Lord, or appeal of Rape done to his wife. Bray. Hist. i. c. 6: Old Nat. Br. 8: Terms of Lea.

Some were Villains by title or prescription, that is to say, that all their blood, had been Villains: Regardant to the Manor of the Lord time out of mind: And some were made Villains by their confection in a Court of Record, &c. Though the Lord might make a manumition to his Villain, and thereby infranchise him: And if the Villain brought any action against his Lord, other than an appeal of Maihem, &c. and the Lord, without procuration, made answer to it, by this the Villain was made free. Terms of Lea 756.

Villain estate was contrariwise distinguished to free estate, by the flat. 8 Hen. 6. c. 11. The Villains were such as dwell in villages, and of that servile condition, that they were usually sold with the farm to which they respectively belonged; so that they were a kind of slaves, and used as such: Villenage, or Bondage, it is said, had beginning among the Hebrews. Terms of Lea 455.

VILLAGE cometh of Villain, and was a half tenure of lands or tenements, whereby the tenant was bound to do all such services as the Lord commanded, or were fit for a Villain to perform: The division of Villenage, by Bradon, was into parum Villenagium a quo praestatur servitium incertum & indeterminatum; & Villenagium sicium, which was to carry the Lord's dung into his fields, to plough his ground at certain days, and reap his corn, &c. and even to empty his jakes; as the inhabitants of some places were bound to do, though afterwards turned into a rent, and that villainous service excused. Every one that held in Villenage was not a Villain or Bondman; for tenure in Villenage could make no Freeman a Villain, unless it were continued time out of mind; nor could free land make a Villain free. Bray. 1. 2. c. 8. See further, this Dictionary, title Tenures III. 13: Villenage; and 2 Comm. c. 5.

The slavery of this custom has been long ago taken off; for we have hardly heard of any case in Villenage since Cruche's Case in Fryer's Rep. There are not properly any Villains now; and the title and tenure of Villenage are abysmed by the Hot. 12 Capt. 2. c. 24.

VILLANIS REGIS SUBTRACTIS RUDERERDIS, A writ that lay for the bringing back of the King's Bondmen, that had been carried away by others out of his manors, whereas they belonged. Reg. Org. 67.
V I L

1. c. the discrediting the testimony of the offender for ever. See 4 Com. c. 15. p. 136.


V I L L E N A G E , Villenage, from Villain. A servile kind of tenure belonging to land or tenements, whereby the Tenant was bound to do all such services as the Lord commanded, or to do for a Villain to do. Ubi fuerit non potest esseque quale servitus servi debet manu. Per every one that held in Villenage was not a Villain, or Boardman: Villenagem vel servitutem atque desertabat libertatis, habuit tempus functorum servitutis. But Villani et servi in Villano facagio de dominico Domino Regis. Bract. l. 1. c. 6. num. 1.

The division of Villenage was into Villenage by Blood, and Villenage by Tenure. Tenure in Villenage could make no Freeman Villain, unless it were continued time out of mind, nor even free land make a Villain free. Bract. l. 2. c. 8. num. 3. divides it into parum Villenagem ad quod praefiter servitutem incertum & indeterminatum, ubi fuerit non potest esseque quale servitus servi debet manu. Viz. ubi fuerit tempus tenuit qui praeter draperiam & servitus servi debet manu, &c. There were likewise Villani Successi, who were those who held their land in socage; and there were Villani Asserviti, who were those who held land by performing certain services expressed in their deeds. Bract. l. 2. c. 8. See title Tenures III. 1: 2 Comm. c. 5.


V I N C U L O M A T R I O N I M , Divorce a. See title Divorce.

V I N E G A R A N D V E R J U I C E , Are liable to certain duties of Customs and Excises, on the importation from abroad, or the manufactory at home; which are regulated by statutes. 24. G. 3. b. 2. c. 41: 26 G. 3. c. 73: 10 & 11 W. 3. c. 21: 7 & 8 W. 3. c. 30: 27 G. 3. c. 13. &c.

V I N E Y A R D S . The owners of Vineyards may make wine of British grapes only growing there, free from any duty. Stat. 10 Geo. 2. c. 17.

V I N N E T , or Virtue, F. A flower or border which printers use to ornament printed leaves of books; mentioned in Stat. 14 Car. 2. c. 37.


V I O L E N C E , Violenta.] All Violence is unlawful. If a man assault another with an intention of beating him only, and he die, it is Felony. And where a person knocks another on the head who is breaking his hedges, &c. this will be Murder, because it is a violent act, beyond the provocation. Kel. Rep. 64. 131. See titles Homicides, Riots.

V I O L E N T P R E S U M P T I O N ; See title Evidence. VIRGA, A Rod, or White Staff, such as Sheriffs, Bailiffs, &c. carry as a badge or ensign of their office. Cowell.


V I R G E , Tenant by. A Species of Copyholders, i.e. such as are held to be held by the Virge, or Rod. In fact, Copyholders and Customary Tenants differ not so much in nature as in name, for though called by different names, yet they all agree in substance and kind of tenure: Their lands are held in one general kind, that is, by custom and continuance of time. See Calterpe en Copyholds, 51, 54: 2 Comm. c. 9. p. 148; and this Dist. titles Copyhold; Verge.


V I R I D I S R O B A , A Coat of many colours; for, in the old books, Viridis is used for varius. Bratt. l. 3.

V I R L I A , The Privy Members of a Man; to cut off which was Felony by the Common Law, though the party conferred it. Bratt. l. 3. p. 144. See tit. Makem.

V I S , Lat.] Any kind of force, violence, or disturbance, relating to a man's person, or his goods, right in lands, &c. See Force; Assault, &c.

V I S C O U N T , Viscount.] A Degree of Nobility next to an Earl. They are now made by patent, as an Earl; but their number is small in this kingdom, in comparison with the other degrees of Peerage. See title Earls of the Realm.

V I S I T A T I O N , Visitatio.] That office which is performed by the Bishop of every diocese once every three years, or by the Archdeacon once a year, by visiting the Churches and their Reclere throughout the whole diocese. Reform. Leg. Eccl. 124. When a Visitation is made by the Archdeanip, all acts of the Bishop are suspended by Inhibition, &c. A Commissary, at his Court of Visitation, cannot cite lay-partitioners, unless he be churchwardens and side-men; and to those he may give his articles, and inquire by them. Noy 123: 3. Salk. 370. Proxies and Procurations are paid by the Parson whose Churches are visited, &c. See those titles.

V I S I T A T I O N - B O O K S O F P E R A G E , when-admissible in evidence; see title Court of Chancery.

V I S I T O R , An Inspector of the government of a Corporation, &c. The Ordinary is Visitor of Spiritual Corporations; but Corporations instituted for private charity, if they are lay, are visitable by the Founder, or whom he shall appoint; and from the sentence of such Visitor there lies no appeal. By implication of Law, the Founder and his Heirs are Visitors of lay-foundations, if no particular person is appointed by him to see that the charity is not perverted, 3 Salk. 361. See further, title Corporation IV.

V I S I T O R O F M A N N E R S , In ancient time, was wont to be the name of the Regarder's office in the forest. Maxim. par. 1. p. 195.

V IS N A , Visitandum.] A neighbouring place, or place near at hand. See Vene.

V I S U S , View, or inspection; as wood is to be taken per Vifum forefijarii, &c. Huw. 784.

V I V A R Y , Vivarium.] A place, by land or water, where living creatures are kept. In Law, it is most commonly used for a park, warren, piscary, &c. 2 Inst. 100.

V I V A V O C E , Is where a Witness is examined personally in open Court. See title Evidence.
VIVO RADIO, Estate in. See titles Vizium Vixum; Mortgage.
ULLAGE, Is when there is want of meaure in a cask, &c.
ULLNAGE, The same with Allowage; which see.
UMPIRE and UMPIRAGE; See title Award.
UNCEASETH, An obsolete word, mentioned in Leg. Alex, cap. 37; viz. he who sells a thief, may make oath that he killed him in flying for the fact, & pernicius ius quis justus unceaseeth; that is, that his kindred will not revenge his death: From the Sax. eah, a little, and on, which is a negative particle, and signifies without; and oath, which is oatb; i.e. to swear that there shall be no contention about it. Blount.
UNCERTAINTY OF THE LAW. On this subject, see 3 Comn. 325; where the popular doctrine of the hardness and inconstancy of this supposed evil is very ably explained and refuted.
UNCIA TERRÆ; UNCIA AGRI. These phrases often occur in the Charters of the British Kings, and signify some Measure or Quantity of Land. It was the quantity of 12 modus, and each modus being 100 feet square. Mon. Angl. iii. 198.
UNCORE PRIST, The plea of a defendant, in nature of a Plea in Bar; where being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it; and that he is also still ready to pay the fame. See title Tender.
UNDE NIHIL HABET; See Dei unde nihil habet.
UNDE-CHAMBERLAIN OF THE EXCHEQUER, An officer there that cleared the Tallies written by the Clerk of the Tallies; and read the fame, that the Clerk of the Pell, and Compurers thereof, might see their entries were true. He also made searches for all records in the Treasury, and had the custody of Documents-book. There were two Officers of this name. Covel. This office is now abolished. See title Exchequer.
UNDER-ESCHEATOR, Sub-Echeator. Mentioned in stat. 5 Eliz. c. 6. See Escheater.
UNDER-SHERIFF, Sub-Vicereumer. See title Sheriff.
UNDER-TAKERS, Such as the King's Purveyors employed as their Deputies. Stat. 12 Car. 3. c. 24. The name is given in several statutes to persons who undertake any great work, as draining of fens, &c. See statutes 3 & 4 P. & M. c. 6. 14 Eliz. c. 11.
UNDER-TREASURER OF ENGLAND, Vicar-Fiscarius Anglicus. An Officer first created in the time of King Henry VII; but some think he was of a more ancient original. His business was to cheek up the King's Treasury at the end of every Term, to note the content of money in each chest, and see it carried into the King's Treasury, for the use of the Lord Treasurer, as being a thing beneath him, but fit to be performed by a man of great trust and secrecy: And, in the vacancy of the Lord Treasurer's office, he did all things in the receipt, &c. This Officer is mentioned in several statutes; and named Treasurer of the Exchequer, till the reign of Queen Elizabeth, when he was termed Under-Treasurer of England. See stat. 39 Eliz. c. 7.
UNDERWOOD, STRANGING OF, is punishable criminally, by whipping, small fines, imprisonment, &c. See statutes 43 Eliz. c. 7: 15 Car. 2. c. 2: and this Dict. title Larcomy I. 1.
UN DieU, ET UN ROY, One God, and One King. The learned Judge Littleton's Motto.
UNDRES, A word used for Minor, or persons under age, not capable to bear arms. Est. Plea, c. 9.
UNFRID, One that hath no quiet or peace. See. UNGELD, A person out of the protection of the Law; so that, if he were murdered, no Gold or fine should be paid, or composition made, by him that killed him. Leg. Etheldred.
UNGILDA AKER. This is mentioned in Brampston, Leg. Athelred, p. 93: and it signifies almost the same as Ungeld, nam. where a man was killed attempting any felony, he was to lie in the field unburied, and no pecuniary compensation was to be paid for his death. From the Sax. un, without, gilda, jolites, and accla, ages. Corell.
UNIFORMITY, Uniformitas; One form of Public Prayers, and Administration of Sacraments, and other Rites and Ceremonies of the Church of England, is prescribed by stat. 1 Eliz. c. 2: 13 & 14 Car. 2. c. 4. See title Dissenter: Nonuniformis.
UNION, Union.] A combining and consolidating of two Churches into one: Alfo, it is when one Church is made subject to another, and one man is Rector of both; and where a Conventual Church is made a Cathedral. Mortmain. In the first signification, if two Churches were so near that the Tithe would not afford a competent provision for each Incumbent, the Ordinary, Patron, and Incumbents, might unite them at Common Law, before any statute was made for that purpose; and in such case it was agreed which Patron should present first, &c.; for though, by the Union, the Incumbency of one Church was loft, yet the Patronage remained, and each Patron might have a Square imputed upon a disturbance to present in his turn. 3 Nef. Abru. 480. The licence of the King is not necessary to an Union, as it is to the Appropriation of Advowsons; because an Appropriation is a Mortmain, and the Patronage of the Advowson is lost, and, by consequence, all Tenths and First Fruits. Dyer 259: Moor 409. 661. See title Appropriation.
By afeent of the Ordinary, Patron, and Incumbent, two Churches, lying not above a mile distant from each other, and whereof the value of the one is not above 6l. a year in the King's Books of First Fruits, may be united into one. Stat. 37 H. 8. c. 21. And, by another statute, in cities and corporation-towns, it shall be lawful for the Bishop, Patrons, and MAyors, or Chief Magistrates of the place, &c. to unite Churches therein; but where the income of the Churches united exceeds 100l. a year, the major part of the Parishes are to consent to the same; and after the Union made, the Patrons of the Churches united shall present, by turns, to that Church only which shall be preterentative, in such order as agreed; and, notwithstanding the Union, each of the Parishes
UNION.

Parishes united shall continue distinct as to rates, charges, 
&c. though the Tithes are to be paid to the Incumbent of the united Church. Stat. 17 Car. 2. c. 3. A Union 
made of Churches of greater yearly value than mentioned in the Stat. 17 H. 8. was held good at Common 
Law; and, by the Canon Law, the Ordinary, with 
content of the Patron, might make an Union of Churches, 
of what value soever; &c. by statute, with the consent of 
the King. Dyer 253; 2 Roll. Abr. 778.

When two Parochial Churches were thus united, the 
repairs continued severally as before; and therefore 
the inhabitants of the parish where any such Church 
was demolished, were not obliged to contribute to the 
repairs of the remaining Church to which it was united. 
Heb. 67. This occasioned the Stat. 17 Car. 2. c. 3. 
and one of them is demolished; when the other Church 
shall be out of repair, the Parishioners of the parish 
where Church is down, shall pay in proportion towards 
the charge of such repairs, &c.

UNION OF ENGLAND AND SCOTLAND; See 
title Scotland.

UNITY OF POSSESSION, Uniatu Pafaficonis ]
Is where a man hath a right to two estates, and holds 
them together jointly in his own hands; as if a man 
take a lease of lands from another at a certain rent, and 
after he buys the fee-simple, this is an Unity of Posses 
sion, by which the lease is extinguished, because that he 
who had before the occupation only for his rent, is now 
become Lord and Owner of the land. Terms de Lys. 
A Leafe for years of an advowson, on the Church be 
coming void, was presented by the Leffor, and inducted 
and inducled; and it was held, that this was a surrender 
of his leafe; for they cannot Iand together in one per 
fen, and by the Unity of Possession one of them is exin 
guished. Hutt. 105. No Unity will extinguih or fulfill 
Tithes, but, notwithstanding any Unity, they remain, &c. 
17 Rep. 14: 2 Litt. 538. Unity of Possession exin 
guished all privileges not expressly necessary; but not 
a way to a close, or water to a mill, &c. because they 
are thus necessary. A way of eale is destroyed by 
Unity of Possession; and a rent, or easement, do not 
exist during the Unity, wherefore they are gone. Litt. 
153, 154: 1 Vent. 95. See further, title Joint-tenants.

UNIVERSITY.

UNIVERSITAS, the Civil Law term for a Corpora 
ion. 1 Comm. 169 ] A place where all kinds of Litera 
ture are universally taught.

The Universities, with us, are taken for those two Bodi 
s which are the nurseries of learning and liberal science 
in this kingdom, viz. Oxford and Cambridge; endowed 
with great privileges. By Stat. 13 Ed. c 29, it was enacted, 
that each of the Universities shall be incorporated by a 
certain name, though they were ancient Corporations 
before; and that all Letters Patent and Charters granted 
to the Universities shall be good and effectual in Law: 
That the Chancellor, Masters, and Scholars, of either 
of the said Universities, shall enjoy all manors, lands, 
liberties, franchises, and privileges, and all other things 
which the said Corporate Bodies have enjoyed, or of 
right ought to enjoy, according to the intent of the 
said Letters Patent; and all Letters Patent, and Li 
berties, Franchises, &c. shall be established and con 
firmed; any law, usage, &c. to the contrary notwith 
standing.

The Universities have the keeping of the assize of 
bread and beer, and are to punish offences concerning it: 
Also they have the assize of wine and ale, &c. And 
The Chancellor, his Commissaries, and Deputies, are Justices 
of Peace for the county of Oxon, county of Oxon, and 
Berks, by virtue of their offices; see Stat. 51 H. 3; 31 
Ed. 1: 7 Ed. 6: 2 3 P. & M.; and the Chart. 29 
Ed. 3: 14 H. 8. &c. Perform all the theatrical perfor 
mances within the precincts of either University, or five 
months thereof; shall be deemed Vagrants; and the Chan 
cellor, &c. may commit them to the House of Correction, 
or Common Goal for one month. Stat. 10 Geo. 2. c. 19.

Their Courts are called the Chancellor's Courts. 
The Chancellors are usually Peers of the Realm, and 
are appointed over the whole University. But the Courts 
are kept by their Vice Chancellors, their Ailifants, or 
Deputies; the causes are managed by Advocates or 
Proctors. See Chart. 14 H. 8. As to the power of these Courts in Civil Cases, see this 
Dictionary, title Courts of the Universities. The follow 
ing particulars are also deserving notice.

These Courts have jurisdiction in all cases, Eccle 
siastical and Civil, (except those relating to Freehold,) 
where a Scholar, Servant, or Miniftier of the University, 
is one of the parties in suit. Cro. Car. 73.

Their proceedings are in a summary way, according to 
the practice of the Civil Law; and in their sentences they 
follow the justice and equity of the Civil Law, or the 
Laws, Statutes, Privileges, Liberties, and Customs of the 
Universities, or the Laws of the Land, at the discretion of 

If there is an erroneous sentence in the Chancellor's 
Court of the University of Oxford, an appeal lies to 
the Congregation, thence to the Convocation, and 
thence to the King in Chancery, who nominates Judges 
Delegates to hear the appeal; the appeal is of the same 
13, 45.

As cognizance is granted to the University of all suits 
arising any where in Law or Equity against a Scholar, 
Servant, or Miniftier of the University, depending before 
the Justices of the King's Bench, Common Pleas, and 
others there mentioned; and before any other Judge, 
though the matter concern the King; therefore, if an 
Initiatitius admissor is brought by Qua in the Ex 
chequer against a Scholar or other privileged person, 
the University shall have confluence; for the Court of Ex 
chequer is included in the general words. Cro. Car. 73: 
Hard. 505.

But if a Debtor and Accountant to the King uses a 
Scholar by bill in Equity in the Exchequer, or if an At 
torney uses a Scholar by writ of Privilege, it is said that 
the Universities shall not have confluence, for a general 
grant shall not take away the special Privilege of any 

But in the cases where Privilege is allowable, a Schol 
ar, &c. cannot waive his Privilege, and have a prohibi 
tion in the Courts of Wiflimfter, for the University by
right has the composure of the plea, where one is a privileged person; and a stranger is forced to sue a privileged person in their Courts, by reason of that right vested in them. 

C. Car. 73: Hal. 28.

But a Scholar ought to be resident in the University, by the time of the last vacation, and no other ought to be joined in the action with him, for in such case he shall not have privilege. Hal. 28. Though it is said that Servants of the University are privileged, it yet has been held, that a Bailiff of a College was not capable of privilege. 

Brew. 74. Neither is a Townsmen entitled to privilege, to exempt him from an office in the town, if he keeps a shop and follows a trade, though he is matriculated as Servant to a Scholar. 

2 Vent. 106.

It is to be observed, that though cases as to Frehold appear, as above, to be the only cases excepted in their Charter; yet it has been held, that in actions for the recovery of the possessions of a Term, without claiming title to the Frehold, the Universities shall have no privilege, because the Frehold may come in question. 


It hath been disputed how far the words of the Grant entitled them to privilege, in matters of Equity. And the general principle of contention seems to be, that where chattels only are concerned, or wherever damages only are to be given, there their privilege is allowable; but where the suit is for the thing itself, then their privilege cannot be allowed. 

Vide 2 Vent. 362.

The jurisdiction of the Criminal Courts in the University of Oxford, is thus stated by Blackstone; and it is believed that of Cambridge is nearly similar. See 2 Lord Rayn. 13, 46.

The Chancellor's Court of Oxford hath authority to determine all causes of property, wherein a privileged person is one of the parties, except only causes of Frehold; and also all criminal offences or misdemeanors under the degree of Treason, Felony, or Mayhem. The prohibition of meddled with Frehold shall continue; but the Trial of Treason, Felony, and Mayhem, by a particular Charter, is committed to the University jurisdiction in another Court, namely the Court of the Lord High Steward of the University.

For by the Charter of 7 June, 2 Hen. 4. (confirmed among the rest, by the Stat. 13 Eliz. c. 29,) cognizance is granted to the University of Oxford of all Indictments of Treason, Infrerations, Felony, and Mayhem, which shall be found in any of the King's Courts against a Scholar or privileged person; and they are to be tried before the High Steward of the University, or his deputy, who is to be nominated by the Chancellor of the University for the time being. But, when his office is called forth into action, the High Steward must be approved by the Lord High Chancellor of England; and a Special Commission under the Great Seal is given to him, and others, to try the indictment then depending, according to the Law of the Land and the Privileges of the said University. When, therefore, an indictment is found at the Assizes, or elsewhere, against any Scholar of the University, or other privileged person, the Vice-Chancellor may claim the cognizance of it; and (when claimed in due time and manner) it ought to be allowed him by the Judges of Assize; and then it comes to be tried in the High Steward's Court. But the indictment must first be found by a Grand Jury, and then the cognizance claimed: For it seems that the High Steward cannot proceed originally ad inquirendum; but only, after inquisition in the Common Law Courts, ad inquirendum et determinandum. Much in the same manner as when a Peer is to be tried in the Court of the Lord High Steward of Great Britain, the indictment must first be found at the Assize, or in the Court of King's Bench, and then (in consequence of a writ of certiorari,) transmitted to be finally heard and determined before his Grace the Lord High Steward and the Peers. See title Parliament; Peers.

When the cognizance is so allowed, if the offence be inter nivos crimina; or a misdemeanor only, it is tried in the Chancellor's Court by the ordinary Judge. But if it be for Treason, Felony, or Mayhem, it is then, and then only, to be determined before the High Steward, under the King's Special Commission to try the same. The precedes of the trial is this: The High Steward issues one precept to the Sheriff of the County, who thereupon returns a panel of eighteen Freholders; and another precept to the Beales of the University, who thereupon return a panel of eighteen matriculated Laymen. "Iste vero praelogium Universitatis gaudente: " And by a Jury formed of meditata, half of Freholders and half of matriculated persons, is the indictment to be tried; and that in the Guildhall of the city of Oxford. And if no execution be necessary to be awarded, in consequence of finding the party guilty, the Sheriff of the County must execute the University Process, to which he is annually bound by an oath. 4 Com. c. 19. p. 277, 8.


Collegians refusing to take the oaths, the King may nominate persons to succeed. Mandamus lies to admit the King's nominee, Stat. 1 Geo. 1. B. 2. c. 13. See title Mandamus. - Vice-Chancellor of Cambridge may act as Justice of the County without the landed qualification, Stat. 7 Geo. 2. c. 10. See title Justices of Peace. The Universities and Royal Colleges excepted out of the Mortmain Act. - Colleges possessed of more advowsons than a moiety of the Fellows, not to purchase more, Stat. 9 Geo. 2. c. 36. §§ 4, 5. See title Mortmain.

UNKNOWN PERSONS, Larceny from. An indictment will lie, for stealing the goods of a Person Unknown, Stat. 1 Hal. P. C. 512. See title Larceny.

UNLAGE, A Saxon word, denoting an unjust Law; in which sense it is used in Leg. Hum. 1. c. 34.

UNLAWFUL ASSEMBLY, Illicita Congregati.] The meeting of three persons or more together, by force, to commit some unlawful act. Lamb. See title Riot.

UNQUES PRIST; See Uncor-prist; Tender.

VOCIFERATIO, An outcry, or hue and cry. Leg. Hum. 1. c. 12. See title Hue and Cry. VOID.
VOIDANCE, Vacatio.] The want of an Incumbent upon an Ecclesiastical Benefice. See Avoidance.

VOID and VOIDABLE. In the Law, some things are absolutely void, and some are voidable. A thing is void which is done against Law at the very time of the doing of it, and it shall bind no person: But a thing which is only voidable, and not void, although it be what he that did it ought not to have done, yet, when it is done, the door cannot avoid the same; though by some act in Law it may be made void by his heir, &c. Abr. 653. But see pud. Where a grant is void at the commencement, no act afterwards can make it good: If a lease is absolutely void, acceptance of rent will not affect it; it is otherwise when a lease is only voidable, there it will make it good. A lease for life which is voidably only, must be made void by re-entry, &c. 3 Rep. 64. This position is very general and perhaps wrong—if an ejectment is brought, the want of entry is cured by the defendant's entering into the rule to confest entry, &c.; but this, in all cases, except where a fine is to be avoided.—It is generally held that covenants made in a void lease or deed, are void, &c. See Univ. 1. 14.

VOUCHER, A word of art, when the Tenant in a Writ of Right calls another into the Court, who is bound to him to warrant; and is either to defend the right against the demandant, or yield him other lands to the value, &c. And it extends to lands or tenements of freehold or inheritance, and not to any chattel real, personal, or mixed: He that voucheth is called the Voucher, and he that is vouched, is called the Vouchee; and the process whereby the Vouchee is called, is a summons ad warrantiam; on which writ if the Sheriff return that the party hath nothing whereby he may be summoned, then goes out another writ called sequitur sub juro peculiari, &c. Co. Litt. 101. See title Recovery.

There is also a Foreign Voucher, when the Tenant being impleaded within a particular jurisdiction, as in London, voucheth one to Warranty in some other county out of the jurisdiction of that Court, and prays that he may be summoned, &c. 2 Rep. 50. On a suit in England, a Voucher does not lie in Ireland: But it lies in Wales, and the Tenant shall be summoned in the next county to it. A Voucher being brought into Warranty, becomes Tenant in Law of the Lands; and when the demandant presents against him, he may plead a reliet, &c. 3 Ed. 1. c. 100. In a Writ of Right in the degrees, none shall vouch out of the line: And in Writs of Right and Possession, it is a good counterplea, that the Vouchee nor his ancestors had ever feisin of the land. Stat. 5 Ed. 1. c. 40. The demandant may aver a Voucher to be dead, and that there is no such person, where the tenant voucheth a person deceased, to Warranty. Stat. 14 Ed. 3. 8th. 1. c. 18. See further, titles Recovery; Warranty.

Voucher, Is also used for a Ledger Book, or Book of Accounts, wherein are entered the acquisitions or warrants for the accountant's discharge. Stat. 19 Car. 2. c. 1. Voucher signifies also, any acquittance or receipt, discharging a person, or being evidence of payment. 

VOX, Voces suae habentes. A phrase made use of by Brand. signifying an infamous person, one who is not to be admitted to be a witness. Bract. lib. 3.

UPHOLDERS, UPHOLSTERS, or UPHOLSTERERS. None shall put to sale any Beds, Bolsters, &c. except such as are stuffed with one sort of dry polished feathers, or clean down; and not mixed with fedded feathers, ten down, thistle-down, flax, &c. on pain to forfeit the same, or the value: And they are to stuff quilts.

VOLUMUS, The first word of a clause in the King's Writs of Protection and Letters Patent. See Protection.

VOLUNTARILY, As applied to a Deed, is where any conveyance is made without a consideration, either of money, or marriage, &c. Thus Reminders limited in settlements, to a man's right heirs, &c. are deemed voluntary in Equity, and the persons claiming under them are called Voluntaries. Abr. Copt. Eq. 385; 3 Salk. 174. See title Fraud.—So an escape may be voluntary. See title Escape.—And as to Voluntary Outlays and Voluntary Wafes, see those titles.

VOTUM, A vow or promise, used by Fleta for nostie; to dies votores, is the wedding-day. Fleta, 1. 14.

VOUCHER, Fr. in Latin Vouche.] To call one to warrant lands, &c. See title Recovery.

VOUCHEE. The person vouched in a Writ of Right. See title Recovery.
QUITTS, mattrains, and cushions, with clean wool, and flocks; without using horse hair, &c. therein, under the like forfeiture. See t. 11 H. 7, & c. 19; &c Ed. 6, & c. 23.

UPLAND, High ground, or terra firma, in contradistinction to marshy and low ground. English.

USA, The River Iji; which River was termed Iji from the Goddess of that name; for it was customary among the Pagans to dedicate hills, woods, and rivers, to favourite Goddesses, and to call them after their names. The Britons having the greatest reverence for Cerri and Protoferna, who was also called Iji, did for that reason name the River Iji: She being the Goddess of the Night, thence they computed days by nights; as Seven Night, &c. Blands.

USAGE, Differed from Custom and Prescription: No man may claim a Rent, or other Inheritance by Usage, though he may by Prescription. 6 Rep. 65. See titles Prescription; Custom.

USANCE, A calendar month, as from May 20 to June 20, and Double Usance is two months. See title Bills of Exchange.

USE, Usus.] Is, in application of Law, the Profit or Benefit of Lands and Tenements; or a Trust and Confidence reposed in a man for the holding of lands, that he to whose Use the Trust is made shall take the profits thereof. Wri. Sym. par. 1: 1 Chitty. 272.

The following extract from the Commentaries, (lib. 2, c. 20), seems to afford the clearest and most periphrastic view of this very intricate part of our Law; and on which our modern Conveyances are in general founded. See further, as connected with the subject, this Dictionary, titles Conveyance; Deed; Lease and Release; Fint of Lands; Recovery; Mortmain; Trust, &c.

USES AND TRUSTS, are, in their original, of a nature very similar; or, rather, exactly the same: Answering more to the false commissio, than the Usus fructus, of the Civil Law; which latter was the temporary right of using a thing, without having the ultimate property or full dominion of the Subsistence: But in our Law, a Use was a Confidence reposed in another, who was Tenant of the Land, or Terrient, that he should dispose of the land according to the intentions of Cofhiique Use, or him to whose Use it was granted, and suffer him to take the profits. As, if a Feoffment was made to A. and his heirs, to the Use of (or in Trust for) B. and his heirs; here, at the Common Law, A. the Terrient, had the legal property and possession of the land, but B., the Cofhiique Use, was in confidence and equity to have the profits and disfrpofal of it. Plowd. 352.

This notion was transplanted into England from the Civil Law, about the close of the reign of Edward III., by means of the foreign Ecclesiastics; who introduced it to evade the statutes of Mortmain, by obtaining grants of lands, not to their Religious Houses directly, but to the Use of the Religious Houses; which the Clerical Chancellors of those times held to be false commissio, and binding in conscience; and therefore assumed the jurisdiction of compelling the execution of such Trusts in the Court of Chancery. See Ryc. 50 Edw. 3, c. 6: 1 Ric. 2, c. 9: 1 Rep. 132; and this Dictionary, title Mortmain. And, as it was most easy to obtain such grants from dying persons, a maxim was established, that though by Law the lands themselves were not devisable, yet if a Testator had enfeoffed another to his own Use, and so was possessed of the Use only, such Use was devisable by will. But this evasion was crushed in its infancy, by Stat. 15 Ric. 2, c. 5, with respect to Religious Houses. See Mortmain.

Yet, the idea being once introduced, however fraudulently, it afterwards continued to be often innocently, and sometimes very laudably, applied to a number of civil purposes; particularly as it removed the restraint of alienations by will, and permitted the owner of lands, in his life-time, to make various designations of their profits, as prudence, or justice, or family convenience, might from time to time require. Till at length, during our long Wars in France, and the subsequent Civil Commissions between the Houses of York and Lancaster, Uses grew almost universal: Through the desire that men had (when their lives were continually in hazard) of providing for their children by will, and of securing their elates from forfeitures; when each of the contending parties, as they became uppermost, alternately attainted the other. Wherefore, about the reign of Edward IV. (before whole time, Lord Bucen remarks, there are not fix cases to be found relating to the doctrine of Uses), the Courts of Equity began to reduce them to something of a regular system. See Bucen on Uses, 313.

Originally it was held that the Chancery could give no relief, but against the very person himself intrusted for Cofhiique Use, and not against his heir or allience. This was altered in the reign of Henry VI., with respect to the heir; and afterwards the same rule, by a parity of reason, was extended to such alienees as had purchased either without a valuable Consideration, or with an express notice of the Use. Kelch. 42. 46: 7. B. 22 Ed. 4. c. 6: Buc. Uses, 312. But a purchaser, for a valuable Consideration, without notice, might well the land discharged of any Trust or Confidence. And also it was held, that neither the King or Queen, on account of their Dignity Royal, nor any Corporation Aggregate, on account of its limited capacity, could be feised to any Use but their own; that is, they might hold the lands, but were not compellable to execute the Trust. Buc. Uses, 346, 347.

And, if the Feoffee to Uses died without heir, or committed a forfeiture, or married, neither the Lord who entered for his eleheft or forfeiture, nor the Husband who retained the possession as tenant by the curtesy, nor the Wife to whom dower was assigned, were liable to proceed against them. But the wife that the husband might hold the lands, but was not compellable to execute the Trust. Buc. Uses, 346, 347.

On the other hand, the Use itself, or Interest of Cofhiique Use, was learnedly refined upon, with many elaborate distinctions. And 1. It was held that nothing could be granted to a Use, whereas the Use is inerparable from the Possession; as Annuities, Ways, Commons, and Authoritites, give the Use communiter; or whereas the Sefmion could not be instantly given. 1 John. 127. Edw. Elis. 407. 2. A Use could not be raised without a sufficient Consideration. For which a man makes a Feoffment to another without any Consideration, Equity presumes that he meant it to the Use of himself; unless he expressly declares it to be to the Use of another, and then nothing shall be presumed contrary to his own expressions. 1 And. 37. But, if either a good or a valuable Consideration appears, Equity will immediately raise a Use.

Use.
USES AND TRUSTS.

Ufs correspond to such Consideration. Mor 684. — 3. Ufs were descendent according to the rules of the Common Law, in the case of Inheritances in Possession: for, in this and many other respects, Agains saecular legem, and cannot establish a different rule of Property from that which the Law has established. 2 Roll. Abr. 780. — 4. Ufs might be alligned by secret deeds between the parties, or be devised by last will and testament: For, as the legal estate in the feud was not transferred by these transactions, no Livery of Seisin was necessary; and, as the intention of the parties was the leading principle in this species of Property, any Instrument, declaring that Intention, was allowed to be binding in Equity. Bac. Ufs. 312. 318. But Coftui-que-Ufe could not, at Common Law, alienate the legal interest of the lands, without the occurrence of his Fecoffee, to whom he was accounted by Law to be only Tenant at Sufferance. See stat. 1 R. 3. c. 1. — 5. Ufs were not liable to any of the Feudal Burdens; and particularly did not escheat for Felony, or other defect of blood; for Echeats, &c. are the consequence of Tenure, and Ufs are held of nobody: But the land itself was liable to Efeoffee, whenever the blood of the Efeoffee to Ufe was extinguished by crime or by defect; and the Lord (as was before observed) might hold it discharged of the Ufe. Tulk. 190. — 6. No Wife could be endowed, or Husband have his Curtesy, of a Ufe: For no Trust was declared for their benefit, at the original grant of the estate. 4 Rep. 1. 2 And. 75. And therefore it became customary, when married, not to marry into some joint estate to the Ufe of the Husband and Wife for their lives; which was the original of modern Jointures. See title Jointures. — 7. A Ufe could not be extended by writ of Eligit, or other legal Proceed, for the debts of Coftui-que-Ufe. For, being merely a Creature of Equity, the Common Law, which looked no farther than to the person actually seised of the land, could award no Proceed against it. Brs. Abr. title Executions, 90. — 8. It is impracticable here to pursue the doctrine of Ufs, though all the refinements and niceties, which the ingenuity of the times, (abounding in subtle disquisitions,) deduced from this child of the imagination; when once a departure was permitted from the plain simple rules of Property established by the Ancient Law. Those principal outlines will be fully sufficient to shew the ground of Lord Bacon’s complaint, that this course of proceeding “was turned to deceive many of their Jilt and reasonable Rights. A man, that had cause to sue for land, knew not against whom to bring his action, or who was the owner of it. The Wife was defrauded of her Thirts; the Husband of his Curtesy; the Lord of Wardship, Relief, Heriot, and Echeats; the Creditor of his Extent for Debts; and the poor Tenant of his Leafe.”

3. The Statute having, thus, abolished the Conveyance to Ufs, but only annulled the intervening estate of the Feoffee, and turned the interest of Coftui-que-Ufe into a legal, instead of an equitable, Ownership, the Courts of Common Law began to take cognizance of Ufs, instead of fending the party to seek his remedy in Chancery. And, considering them now as merely a mode of Conveyance, very many of the rules before established in Equity were adopted, with improvements, by the Judges of the Common Law. The same persons only were held capable of being seised to a Ufe, the same consider­ances were necessary for raising it, and it could only be raised of the same hereditaments, as formerly. But as the statute, the infant it was raised, converted it into an actual possession of the land, a great number of the incidents, that formerly attended it, in its fiduciary state, were now at an end. The land could not escheat or be forfeited by the act or defect of the Feoffee, nor be alienated to any purchaser discharged of the Ufe, nor be liable to Dower or Curtesy on account of the seisin of such Feoffee; because the legal estate never rests in him for a moment, but is instantaneously transferred to Coftui-que-Ufe, as soon as the Ufe is declared. And, as the Ufe and the land were now convertible terms, they became liable to Dower, Curtesy, and Echeats, in consequence of the seisin of Coftui-que-Ufe, who is now become the

Terre-tenant.
USES AND TRUSTS.

The necessities of mankind induced also the Judges very soon to depart from the rigour and similitude of the rules of the Common Law, and to allow a more minute and complex construction upon Conveyances to Uses than upon others. Hence it was adjudged, that the Use need not always be executed the instant the conveyance is made; but, if it cannot take effect at that time, the operation of the statute may wait till the Use shall arise upon some future contingency, to happen within a reasonable period of time; and in the meantime the ancient Use shall remain in the original grantor: As, when lands are conveyed to the use of A and B, after a marriage shall be had between them, or to the Use of A and his heirs till B shall pay a sum of money, and then to the Use of B and his heirs. 2 Roll. Abr. 791; Cr. Eliz. 439; Bro. Abr. title Feoffin. al. Uses. 30. Which doctrine, when Devises by Will were again introduced, and considered as equivalent in point of construction to Declarations of Uses, was also adopted in favour of Executory Devises. See that tide. But here, these, which are called Contingent or Springing Uses, differ from an Executory Devise, in that there must be a person failed to such Uses at the time when the contingency happens, else they can never be executed by the Statute; and therefore if the estate of the Pecopte to such Use be destroyed by alienation, or otherwise, before the contingency arises, the Use is destroyed for ever; whereas as by an Executory Devise the freehold itself is transferred to the future Devisee. 1 Rep. 134, 135; Cr. Eliz. 439. And, in both these cases, a fee may be limited to take effect after a fee; because, though that was forbidden by the Common Law in favour of the Lord's freehold, yet, when the legal estate was not extended beyond one fee simple, such infrubsequent Uses (after a Use in fee) were before the statute permitted to be limited in Equity; and then the statute executed the legal estate in the same manner as the Use before adjudged. Poph. 78: 10 Abr. 423. It was also held, that a Use, though executed, may change from one to another by circumstances as if a Use, after a Use in fee, is executed in the wife of his intended wife and her eldest son for their lives, upon the marriage the wife takes the whole Use in severality; and, upon the birth of a son, the Use is executed jointly in them both. Bac. Uf. 521. This is sometimes called a Secondary, sometimes a Shifting Use. And, whenever the Use limited by the deed expires, or cannot vest, it returns back to him who raised it, after such expiration or during such impossibility, and is styled a Rescinding Use. As, if a man makes a Feoffment to the Use of his intended wife for life, with remainder to the Use of her first born son in tail: here, till he marries, the Use rests back to himself; after marriage, it is executed in the wife for life; and, if she dies without issue, the whole falls back to him in fee. Bac. Uf. 350: 1 Rep. 120. It was likewise held, that the Uses originally declared may be revoked at any future time, and new Uses be declared of the land, provided the grantees referred to himself such a power at the creation of the estate; whereas the utmost that the Common Law would allow, was a deed of Defeasance coeval with the grant itself (and therefore esteem'd a part of it) upon events specifically mentioned. And, in case of such a revocation, the old Uses were held infallibly to cease, and the new ones to become executed in their stead. Cr. Litt. 237. And this was permitted, partly to indulge the convenience, and partly the caprice of mankind, who (as Lord Bacon observes) have always affected to have the disposition of their property revocable in their own time, and irrevocable ever afterwards. Bac. Uf. 316.

By this equitable train of decisions in the Courts of Law, the power of the Court of Chancery over landed property was greatly curtailed and diminished. But one or two technical scruples, which the Judges found it hard to get over, refored it with ten-fold increase. They held, in the first place, that "no Use could be limited on a Use, and that when a man bargains and sells his land for money, which raises a Use by implication to the bargainee, the limitation of a farther Use to another person is repugnant, and therefore void. D. 35: 1 And. 373. And therefore, on a feoffment to A. and his heirs, to the Use of B. and his heirs, in trust for C. and his heirs, they held that the statute executed only the first Use, and that the second was a mere nullity, not adverting, that the infant the first Use was executed in B., he became fefted to the use of C; which second Use the statute might as well be permitted to execute as it did the first; and so the legal estate might be instantaneous transmitted down, through a hundred Uses upon Uses, till finally executed in the last Cestui-que-Ufe. [It is now the practice to introduce only the names of the Trustee and Cestui-que-Ufe; the estate, being conveyed to A. and his heirs, to the Use of A. and his heirs in trust for B. and his heirs.] Again; as the statute mentions only such persons as were fefted to the Use of others, this was held not to extend to terms of years, or other chattel interests, whereof the termor is not fefted, but only possidid; and therefore, if a term of one thousand years be limited to A. to the Use of (or in trust for) B., the statute does not execute this Use, but leaves it at Common Law. Bac. Uf. 353: 1 Jane. 234: Poph. 76: Dyre 304. And, lastly, (by more modern regulations,) where lands are given to one and his heirs, in trust to receive and pay over the profits to another, this Use is not executed by the statute, for the land must remain in the trustee to enable him to perform the trust. 2 Comm. e. 20, tit. 1 Bro. Abr. 383, 384.

It seems, however, now to be decided, that to prevent a trust from being executed by the statute in cases of this kind, it is necessary that the Trustees should have some control and discretion in the application of the profits of the estate, as to make repairs, or provide for the maintenance of the Cestui-que-Ufe. Where there is no such special circumstance, it appears to be equivalent to a direction to Trustees to permit Cestui-que-Ufe to take the profits of the estate, which is fully established, to be a Use executed. 1 Comm. e. 20, in n., cit. 1 Bro. C. R. 75: 2 Term Rep. 444: 1 Bro. Abr. 335.

Of the two more ancient dilutions the Courts of Equity quickly availed themselves, and in the first case it was evident that B. was never intended by the parties to have any beneficial interest; and, in the second, the Cestui-que-Ufe of the term was expressly driven into the Court of Chancery to seek his remedy; and therefore that Court determined, that though these were not Uses, which the statute could execute, yet till they were
USES AND TRUSTS.

The only service, therefore, to which this celebrated Statute of Uses is now confined, is giving efficacy to certain new and secret species of Conveyances; introduced in order to render transactions of this sort as private as possible, and to evade the trouble of making Livery of Seisin, the only ancient Conveyance of Corporeal Freehold; the security and necessity of which public inconvenience abundantly overpaid the labour of going through the land, or of sending an Attorney in one's stead: But which has given way to a species of Conveyances called a Covenant to Stand Seized to Uses; by which a man, feized of lands, covenants, in consideration of Blood or Marriage, that he will stand feised of the same to the Use of his Child, Wife, or Kinsman; for Life, in Tail, or in Fee. Here the Statute executes as at once the estate; for the party intended to be benefited, having thus acquired the Use, is thereby put at once into Corporal Possession of the land, without ever seeing it, by a kind of Parliamentary Magic. But this Conveyance can only operate, when made upon such weighty and interesting considerations as those of Blood or Marriage. 2 Comm. c. 20. See this Dictionary, titles Conveyance; Covenant to stand Seized, &c.

When the legal and equitable Estates meet in the same persons, the Trust or equitable Estate is merged in the legal Estate: As if a Wife should have the legal Estate and the Husband the equitable: and if they have an only Child, to whom these Estates descend, and who dies intestate without issue, the two Estates, having united, the defendant will follow the legal Estate, and the Estate will go to the Heir on the part of the Mother. Doug. 771: Goodridge v. Alford v. Wells.

Superstitious Uses. A Device of lands or goods to Superstitious Uses, is where it is to find or maintain a Chaplain or Priest to pray for the souls of the dead; or a lamp in a chapel, a Ripendary Priest, &c. These, and such like, are declared to be Superstitious Uses; and the lands and goods so devised are forfeited to the King by stat. 1 Ed. 6 c. 14: See also stat. 23 H. 8 c. 10, and this Dict. titles Mortmain; Charitable Uses. A man devised lands to Trustees and their heirs, to find a Priest, to pray for his soul, so long as the Laws of the land would permit; and if the Laws would not permit it, then to apply the profits to the Poor, with power to convert the profits to either of the said Uses; adjudged this was not a Device to any Superstitious Use. 3 Nels. Abr. 259.

Where certain profits arising out of lands are given to Superstitious Uses, the King shall have only so much of the yearly profits, which were to be applied to the Superstitious Uses; though when the land itself is given to the tellator, declaring that the profits, without saying how much, shall be employed for such Uses, in this case the King shall have the lands itself. Mor. 179.

If a sum certain is given to a Priest, and other goods which depend upon the Superstitious Use, all is forfeited to the King; yet if land, &c. is given to an obit, or anniverary, and for another good Use, and there is no certainty how much shall be employed to the Superstitious Use, the gift to the good Use shall preserve the whole from forfeiture. 4 Rep. 1044 2 Roll. 205. Where a Superstitious Use is void, so that the King could not have it, it is not so far void, as to refult to the heir at law; and therefore the King may apply it to charity. 1 Salk. 105. It seems now, that, independent of the statutes, Devises of this kind could not have effect; for either they would be void by the Mortmain statutes, or when not within the reach of any of them, would be deemed superstitious by the Courts of Equity; which would therefore direct the money to be applied to some Use really charitable, at the Court's discretion; or should the determined Uses not be thought strong enough to warrant the exercise of a discretion so large, would confider the Devise as a Trustee, for such as would be estilled if there were no Devise. 1 Inst. 1126 n. 2. See Vin. Abr. Charitable Uses (D).

USER DE ACTION, is the pursing or bringing an Action, in the proper county, &c. Br. 64.

USHER, Fr. Heilfer, a door-keeper.] An officer in the King's house, as of the Privy Chamber, &c. There are also Ushers of the Courts of Chancery and Exchequer.

USUCAPTION, Usucapio.] The enjoying by continuance of time; a long possession, or prescription. Termini de Leg. Rather the taking the profit of a thing.
USURY

USUFRUCTUARY. Usfructumvirt.] One that hath the Use and reaps the profit of a thing.

USURIOUS CONTRACT. Any Bargain or Contract, whereby any man is obliged to pay more Interest for Money than the Law allows. See title Usury.

USURPATION. Usurpation.] The using that which is another's; an interruption or disturbing a man in his right and possession, &c. Usurpations in the Civil and Canon Law are called Intrusions; and such Intruders, having not any right, shall submit, or be communicated and deprived, &c. by Benefactor's Conf. Gibb Codex 8i. For Usurpations of Advowsons, see title Advowson.

As to Usurpations of Branches, see titles Corporation, &c. Warranto.

USURY.

USURA.] Money given for the Use of Money; it is particularly defined to be the gain of any thing by contract above the principal, or that which was lent, exacted in consideration of Loan thereof, whether it be of Money, or any other thing. 3 Inst. 151. Some make Usury to be the Prefervatives for a Loan made to a person in want and distress; but probably it consists in exacting an unreasonable rate for Money, beyond what is allowed by positive Law. The letting Money out at Interest, or upon Usury, was against the Common Law; and in former times, if any one after his death had been found to be an Usurer, all his goods and chattels were forfeited to the King, &c. And according to several ancient statutes, all Usury is unlawful; but at this time neither the Common or Statute Law absolutely prohibit Usury, 3 Inst. 151, 152. By this is meant Interest for Money lent, not exceeding the settled rate: Interest being the lawful gain; Usury the extortion of unlawful gain.

If judgment cannot be given on the statute against Usury, it hath been said that if it be found that a person took money for forbearance by corrupt agreement, judgment may be given against him at Common Law, of fine and imprisonment. 3 Salk. 391.

Whatever were the prejudices of early times against the taking of Interest, they appear to have worn off in the reign of Henry VIII.; a rational commerce having taught the Nation, that an estate in money, as well as an estate in land, houses, and the like, might be let out to hire; without the breach of one moral or religious duty. And indeed, when the force of this prejudice is examined, it will be found to have originated in a political, and not a moral precept; for though the Jews were prohibited from taking Usury, that is, Interest, from their brethren, they were in express words permitted to take it from a stranger. 2 Comm. 455, 6.

What shall be a reasonable price for the loan of money must necessarily depend on a variety of circumstances. In the reign of Henry VIII. 101. per cent. was allowed, as the legal rate of Interest, but by stat. 5 & 6 Ed. 6. c. 20, it was observed, that the stat. 37 H. 8. c. 9, allowing this rate of Interest, had been contrived to give a licence and sanction to all Usury not exceeding 101. per cent.; and this contrivance was declared to be utterly against Scripture; and therefore all persons were forbidden to lend or forbear by any device, for any Usury, Lucre, Lucro, or Gain whatsoever, on pain of forfeiting the thing, and the Usury or Interest, and of being imprisoned and fined; and to the Law. Rood till the stat. 13 Eliz. c. 8, which revived the stat. 37 H. 8. c. 9, and ordained that all brokers should be guilty of a pernicious trade, and transacted any contracts for more; and the securities themselves should be void. The statute 21 Eliz. c. 17, further reduced the rate of interest to 81. per cent.; and it having been lowered in 1650, during the Usurpation, to 61. per cent., the same reduction was re-enacted after the Restoration, by stat. 12 Car. 2. c. 13. And, lastly, this rate of Interest was reduced to 51. per cent. by stat. 12 Ann. c. 16.

By this stat. 12 Ann. c. 16, no person shall take, directly or indirectly, for loan of any money, or any thing, above the value of 51. for the forbearance of 100. for a year, and so proportionably for a greater or less sum; and all brokers, contractors, and assurances made for payment of any principal sum to be lent on Usury, above the rate of 51. per cent. shall be utterly void. And whoever shall take, accept, or receive by way of corrupt bargain, loan, &c. a greater Interest, shall forfeit treble the money borrowed, one half of the penalty to the prosecutor, the other to the King. And if any Strivnor or Broker takes more than 51. per cent. for making a Bond, he shall forfeit 20. with costs, and suffer half-year's imprisonment. See also title Annusiae for Life.

These restrictions, however, do not apply to contracts made in foreign countries, for such contracts our Courts will direct the payment of Interest according to the Law of the country in which such contract was made. Eliz. 7, East India Company, 1 P. Wms. 396; 2 Bro. P. C. 72. Thus Irish, American, Turkish, and Indian Interest have been allowed in our Courts to the amount of even 121. per cent. For the moderation or exorbitance of Interest depends upon local circumstances; and the refusal to enforce such a contract would put a stop to all foreign trade. And by stat. 14 Geo. 3. c. 75, all mortgages and other securities upon estates and other property, in Ireland, or the Plantations, bearing Interest not exceeding 51. per cent. shall be legal, though executed in the kingdom of Great Britain, unless the money lent shall be known at the time to exceed the value of the thing in pledge; in which case, also, to prevent Usurious Contracts at home, under the colour of such foreign securities, the Borrower shall forfeit treble the sum borrowed. 2 Comm. 463, 4. See title Mortgages.

The following determinations will further explain the general principles that govern the cases on this subject.

It is not necessary that Money should be actually advanced, to constitute the offence of Usury, but any contrivance or pretence whatever to gain more than legal Interest, where it is the intent of the parties to contract for a Loan, will be Usury: As where a person applies to a tradesman to lend him money, who, instead of cash, furnishes him with goods, to be paid for at a future day, but at such an exorbitant price as to secure himself more than legal Interest, upon the amount of their intrinsic value, this is an Usurious Contract. The question of Usury, or whether a Contract is a colour and pretence for an Usurious Loan, or is a fair and honest transaction, must, under all its circumstances, be determined by a Jury, subject to the correction of the Court by a New Trial, Coop. 114, 770; Doug. 708; 3 Term Rep. 33.
USURY.

It is remarkable, that one particular species of indirect Usury is guarded against by the Stat. 17 H. 8. c. 9. and this part of the statute seems still in force.—By this it is enacted, that no person shall sell his merchandizes to any other, and, within three months after, buy the same, or any part thereof, upon a lesser price, knowing them to be the same, on pain to forfeit the value; half to the informer, and half to the King; and also to be punished by fine and imprisonment.

It is now clearly settled that Bankers, and others discounting bills, may not only take 5l. per cent. for Interest, but also a reasonable sum besides, for their trouble and risk, in remitting cash, and for other incidental expenses; but whether such a charge is reasonable, or usurious, must be decided by a jury, assisted by the direction of the Judge.—If a contract is entered into to pay more than legal Interest, though the debt, nor the money in pursuance of an usurious agreement, is doubtful, the though the lender is not to his competency as a guarantor to receive such money, and the defendant shall not be punished, unless he receive some part of the money in accordance of the statute. 3 Bla. 120

There can be no Usury, without a Loan; and the Court hath distinguished between a Bargain and a Loan, 1 Lecu. 273: 3 Bla. 77. If a man lend another 10l. for two years, to pay the loan 30l. and if he pays the principal at the year's end, he shall pay nothing for Interest; this is not Usury, because the party may pay it at the year's end, and so discharge himself. Cro. Jac. 599: 5 Rep. 69. And in the same where a person, by special agreement, is to pay double the sum borrowed, &c. by way of penalty, for non-payment of the principal debt; the penalty being in lieu of damages, and the Borrower might repay the principal at the time agreed, and avoid the penalty. 2 Lea. 89: 2 Bar. Ab. 361.

But if these clauses be inferred merely to evince the statute, the contract is void, and the lender is liable to the penalties of Usury. 1 Hawk. P. C. c. 82. § 19.

A man forfends a copyhold estate to another, upon condition that if he pays 50l. at a certain day, then the forfender to be void; and after it is agreed between them that the money shall not be paid, but that the forfender shall forfeit, &c. In consideration whereof, the forfender promises to pay to the forfendor, on a certain day, 50l. orb. per annum from the said day; the forfender to interese of the said 50l. till that sum is paid: This 50l. shall be taken to be interest damnum, and not lucrum, and but limited as a penalty for non-payment of the 50l. as a nomine pater, &c. 2 Bar. Rep. 469: 1 Danv. Abr. 44. On a loan of 10l. or other sum of money for a year, the lender may agree to take his Interest half-yearly, or quarterly; or to receive the profits of a Manor or Leases. &c. and it will be no Usury, though such profits are rendered every day. Cro. Jac. 29.

If a grant of rent, or lease for 50l. a year of land which is worth 10l. per annum, be made for one hundred pounds, it is not Usurious; if there be not an agreement, that this grant or lease shall be void, upon payment of the principal and arrears, &c. 3 Bla. 249. But if two men speak together, and one desires the other to lend him an hundred pounds, and, for the loan of it, he will give more than legal Interest; and, to evade the statute, he grants to him 50l. per annum out of his land for ten years, or makes a lease for one hundred years to him, and the lessee renews it upon condition that he shall
Usury.

shall pay 50l. yearly for the ten years: In this case it is Usury, though the lender never have his own hundred pounds again. 1 Cro. 27. See 1 Com. 110.

A man granted a large rent for years, for a small sum of money: The Statute of Usury was pleaded; and it was adjudged, that if it had been laid to be upon a loan of money, it had been usurious; though it is otherwise if it be a contract for an annuity. 3 Salk. 120. If one hath a rent-charge of 50l. a year, and another all else he shall give for it, and they agree for 100l. this is a plain contract for the rent-charge, and no Usury. 3 Nelf. 516. The grant of an annuity for lives, not only exceeding the rate allowed for interest, but also the proportion for contracts of this kind, in consideration of a certain sum of money, is not within the statutes against Usury; and so of a grant of an annuity, on condition, &c. Cro. Jus. 253. 2 Lev. 7. See 1 Sid. 182; and this Dict. title Annuitates for Lives.

Where interest exceeds 5l. per cent. per annum on a bond, if pollibly the principal and interest are in hazard, upon a contingency or casualty, or if there is a hazard that one may have lost his principal, as when a bond is to pay money upon the return of a ship from sea, &c. there are not Usury. 2 Cro. 208, 508: 1 Cro. 27: Salk. 8. Though where B. lends to D. three hundred pounds on bond, upon an adventure in the life of E. for such a time; if therefore D. pays to B. twenty pounds in three months, and, at the end of six months, the principal sum, with a farther premium, at the rate of 6l. per pound a month; or if before the time mentioned E. dies, then the bond to be void: This, differing from the hazard in a bottomy bond, was adjudged an usurious contract. Cartesew 67, 68: Camb. 125. One hundred pounds is lent to have 100l. at the year's end, upon a casualty; if the casualty goes to the interest only, and not the principal, it is Usury. The difference is, that where the principal and interest are both in danger of being lost, there the contract for extraordinary interest is not usurious; but where the principal is well secured, it is otherwise. 3 Salk. 591. See title Injuance IV. as to Bottomy Bonds.

A lender accepting a voluntary gratuity from the borrower, on payment of the principal and interest; or receiving the interest before due, &c. without any corrupt agreement, shall not be within the statutes against Usury. 2 Cro. 677: 3 Cro. 501. Also if one gives an usurious bond, and tenders the whole money; yet if the party will take only legal interest, he shall not forfeit the treble value by statute, 4 Lev. 43. Judgment on an indictment for Usury was arrested, because it only laid a corrupt agreement, without any loan, or taking excessive interest in pursuance of it. 2 Strange 816.

In action for Usury, a corrupt agreement must be set forth: It is not sufficient to plead the statute, and say that for the lending of 200l. the defendant took more than 5l. per cent. without setting forth a corrupt agreement or contract. Lann. 466: 2 Lill. 672. In case of

Vult

Usury, &c. an obliger is admitted to aver against the condition of a bond, or against the bond itself, for necessity's sake. Poffeb. 6 W. & M. B. R.

In all questions, in whatever respect repugnant to the statute, the nature and substance of the transaction, and the view of the parties, must be ascertained to satisfy the Court, that there is a Loan and Borrowing: And where the real truth is, a loan of money, the wit of man cannot find a shift to take it out of the statute: And though the statute mentions only loans of monies, wares, merchandizes, and other commodities, yet any other contrivance, if the substance of it be a loan, will come under the word, indirectly. Corp. 115, 706: Doug. 712.

As to pleading the Statute of Usury, Vide Com. Dig. title Pleader. Also see further on this subject, 5 New Abr. and 22 Vin. Abr. title Usury.

UTAS, Octave. The eighth day following any term or feast; as the Usas of St. Michael, &c. And any day between the Feast and the Octave is said to be within the Usas: The use of this is in the return of writs; as appears by the sdt. 51 H. 3. f. 2. See titles Term: Days in Bank.

UTENSIL. Any thing necessary for use and occupation; as household stuff, &c. Cowell.

UTEINUS FRATER. A brother by the mother's side. Forise. de Laud. Lb. Ang. 5. See title Deponent.

UTFANGTHIEF; See Outfanging.

UFLAGATO a capiendo, quando uflagatur in uno constante, et poenae fugii in alienum: A writ, the nature whereof is sufficiently expressed by the name. See Reg. Orig. 47. See this Dictionary, title Outlawry.

UTLEGH, Utlibagis, Utlibagas.] An outlaw. Pitta, l. 1. c. 47. See Outlawry.

UTLAWRY, Utlibara, vel Utlagatio.] See title Outlawry.

UTLEPE, Sax.] An escape of a felon out of prison. Fleta, lib. 1. c. 47.

UTRUM, A writ now of little use. Terms de Leg. See Affid. de Utrum.

UTTER BARRISTERS, Juris consulti.] Barristers at Law, newly called, who plead without the Bar, &c. See titles Barrister; Serjeant.

UTTERING FALSE MONEY; See titles Coin; Treason.

VULGARIS PURGATIO. The most ancient species of trial, was that by ordeal, which was peculiarly distinguished by the appellation of Judicium Dei; and sometimes Vulgaris Purgatio, to distinguish it from the canonical purgation, which was by the oath of the party. See title Ordeal.

VULTIVA. A wound in the face—Vultivum 50 fol. component. Leg. Sax.

VULTUS DE LUCA, The image or portrait of our crucified Saviour kept at Luca in the Churches of the Holy Cross: Will. 1, called the Conqueror, often swore per sanctum vultum de Luca. Badm. lib. 11: Malmes. lib. 4.
WAF

WAFTEORS, Wafftors.] Conductors of vessels at sea; King Edw. IV. constituted certain officers with naval power, whom he filled Caffodes, Conductors, and Wafftors, to guard our fishing vessels on the coasts of Norfolk and Suffolck. Pat. 22 Ed. 4.

WAGE, Vadiare, from Fr Gage.] The giving of security for performance of any thing; as to Wage or gage deliverance, to Wage law, &c. Co. Litt. 294. See Wager of Law.

WAGER OF BATTLE; See title Battel.

WAGER OF LAW, Vadiatio Legis.] So called, because the defendant puts his sureties, named, that at such a day he will make his Law, that is, take the benefit which the Law has allowed him. 3 Comm. c. 22; 1 Infh. 295.

This takes place where an action of debt is brought against a man upon a simple contract between the parties, without deed or record; and the defendant swears in Court in the presence of eleven compurgators, that he oweth the plaintiff nothing, in manner and form as he hath declared: The reason of this waging of Law is, because the defendant might have paid the plaintiff his debt in private, or before witnesses who may be all dead, and therefore the Law allows him to wage his Law in his discharge; and his oath shall rather be accepted to discharge himself, than the Law will suffer him to be charged upon the bare allegation of the plaintiff. 2 Infh. 45. Wager of Law is used in actions of debt without specialty, and also in actions of detinue, for goods or chattels lent or left with the defendant, who may swear on a book, that he detaineth not the goods in manner as the plaintiff has declared, and his compurgators, (who must, in all cases, as it seems now, be eleven in number,) swear that they believe his oath to be true.

3 Comm. c. 22.

The manner of waging Law is thus: He that is to do it, must bring his compurgators with him into Court, and stand at the end of the bar towards the right hand of the Chief Justice; and the Secondary asks him, whether he will wage his Law? If he answers that he will, the Judge admonisheth him to be well advised, and tells him the danger of taking a false oath; and if he still persists, the Secondary says, and he that wagers his Law repeats after him: “Hear this, ye Justices, That I A. B. do not owe to C. D. the sum of, &c. or any penny thereof, in manner and form as the said C. D. hath declared against me: So help me God.” Though, before he takes the oath, the plaintiff is called by the Crier thrice; and if he do not appear he becomes nonsuit, and then the defendant goes quit without taking his oath; and if he appear, and the defendant swears that he owes the plaintiff nothing, and the compurgators do give it upon oath that they believe he swears true, the plaintiff is barred for ever; for when a person has wagered his Law, it is as much as if a verdict has passed against the plaintiff: If the plaintiff do not appear to hear the defendant perform his Law, so that he is nonsuit, he is not barred, but may bring a new action. 1 Infh. 155; 2 Lit. Abr. 674.

In an action of debt on a by-law, the defendant wagered his Law; a day being given on the roll for him to come and make his Law, he was set at the right corner of the Bar, and the Secondary asked him, if he was ready to wage his Law; who answering that he was, he laid his hand on the book, and then the plaintiff was called: Then the Judges admonished him and his compurgators not to swear rashly; and thereupon he made oath, that he did not owe the money made et forma as the plaintiff had declared; and then his compurgators, who were standing behind him, were called, and each of them laying his hand upon the book, made oath that they believed what the defendant had sworn was true. 2 Pint. 171; 2 Salk. 682. The defendant cannot wage his Law in any action, but personal actions, where the cause is secret; and Wager of Law has been denied on hearing the cause, and the defendant been advised to plead to little, &c. 2 Lit. 675, 676.

Executors and administrators, when charged for the debt of the deceased, shall not be admitted to wage their Law: For no man can, with a safe confidence, wage Law of another man's contract; that is, swear that he never entered into it, or at least that he privately discharged it. Finch L. 424. The King also has his prerogative for, as all Wager of Law imports a reflection on the plaintiff for dishonestly, therefore there shall be no such Wager on actions brought by him. Finch L. 425. And this prerogative extends and is communicated to debtor and acceptant; for, on a writ of quo minus in the Exchequer for a debt on simple contract, the defendant is not allowed to wage his Law, 1 Infh. 295.

In short, the Wager of Law was never permitted, but where the defendant bore a fair and irreproachable character; and it also was confined to such cases where a debt might be supposed to be discharged, or satisfaction made in private, without any witnesses to attest it; and many other prudential restrictions accompanied this indulgence. But at length it was considered, that (even under all its restrictions) it threw too great a temptation in the way of indigent or prodigal men; and therefore by degrees new remedies were devised, and new forms of actions were introduced, wherein no defendant is at liberty to wage his Law. So that now no plaintiff need at all apprehend any danger from the hardness of his debtor's...
debtor's conscience, unless he voluntarily chooses to rely on his adversary's veracity, by bringing an obdurate, instead of a modern, action. Therefore one shall hardly here at present of an action of debt brought upon a simple contract; that being supplied by an action of trespass on the cale for the breach of a promise, or an act upon; wherein, though the specific debt cannot be recovered, yet damhas may, equivalent to the specific debt: And this being an action of trespass, no Law can be waged therein. So, instead of an action of desire to recover the very thing desired, an action of trespass on the cale in tover and conversion is usually brought; wherein, though the horse or other specific chattel cannot be had, yet the defendant shall pay damages for the conversion, equal to the value of the chattel; and for this trespass, no Wager of Law is allowed. In the room of actions of account, a bill in equity is usually filed; wherein, though the defendant answers upon his oath, yet such oath is not conclusive to the plaintiff; but he may prove every entry by other evidence, in contradiction to what the defendant has sworn. So that: Wager of Law is quite out of use, being avoided by the mode of bringing the action: but still it is not out of force. And therefore, when a new statute inflicts a penalty, and gives an action of debt for recovering it, it is usual to add, "in which no Wager of Law shall be allowed," otherwise an hardship might escape any penalty of the Law, by swearing he has never incurred, or else had discharged it. See 3 Comm. c. 22, where many particular as to this obsoleat species of trial by the oath of a defendant, and his co-companigers, are detailed.

WAGERING POLICIES; See title Infrancer.

WAGERS. By Stat. 7 Ann. c. 17, all Wagers laid upon a contingency relating to the then war with France, and all securities, &c. therefore were declared to be void; and persons concerned were to forfeit the sums laid.

In general, a Wager may be considered as legal, if it be not an incumbrance to a breach of the peace, or to immorality; or if it do not affect the feelings or interest of a third person, or excite him to ridicule: or if it be not against found policy. Comp. 292; 2 Term Rep. 610; 3 Term Rep. 677: where the principal cases on this point are very fully considered. See Gaming.

WAGES, The reward agreed upon by a master to be paid to a servant, or any other person which he hires to do business for him. 2 Litt. Abr. 677. See titles Labourers; Servants.

WAGES OF MEMBERS OF PARLIAMENT; See Parliament.

WAGGONS and WAGGONERS; see titles Carri; Higbeouns; Turnpikes.

WAIFS, from the Sax. Wafata; Fr. Chois gardé; Lit. Beut Wairattat. Goods which are stolen and espoused (i.e. abandoned) by the felon, on his being pursed, for fear of being apprehended; which are forfeited to the King, or Lord of the Manor, if he hath the franchise of Waf. Kitz. 81. If a felon in pursuit waives the goods; or, having them in his custody, and thinking that pursuit was made, for his own ease and more speedy flight, flies away and leaves the goods behind him; then the King's Officer, or the Bailiff of the Lord of the Manor within whose jurisdiction they are left, which hath the franchise of Waf., may seize the goods to the King's or Lord's use, and keep them; except the owner makes fresh pursit after the felon, and sue for an Appeal of Robbery within a year and a day, or give evidence against him whereby he is assized, &c. To which effect, the owner shall have restitution of his goods to stolen and waived. Stat. 21. H. S. c. 14: 5 Rep. 109: Finch L. 212.

Waived goods also do not belong to the King, till seized by somebody for his use; for if the party robbed can seize them first, though at the distance of 20 years, the King shall never have them. Finch L. 212: 1 Comm. c. 8.

Goods waived by a felon, in his flight from those who pursue him, shall be forfeited. And though Waf is generally spoken of goods stolen, yet if a man be pursed with hue and cry as a felon, and he flies and leaves his own goods, these will be forfeited as goods stolen; but they are properly fugitive goods, and not forfeited, till it be found before the Coroners, or otherwise of record, that he fled for the felony. 2 Hark. P. C. c. 49; § 17.

The Law makes a forfeiture of goods waived, as a punishment to the owner of the goods, for not bringing the felon to justice: But if the thief had not the goods in his possession when he fled, there is no forfeiture. If a felon steal goods and hide them, and afterwards flies, these goods are not forfeited: So where he leaves stolen goods anywhere, with an intent to fetch them at another time, they are not waived; and in these cases, the owner may take his goods where he finds them, without hazard, &c. See, Cro. Eliz. 694: 5 Rep. 109: More 785.

The goods of a foreign Merchant, though stolen and thrown away in flight, shall never be Waifs. Five Afr. c. 408: E. 3. 17. We read of pliacta corona & Wafs, in the manner of Upton, sc. in com. Salop. See 22 Vin. Abr. 408—410; and this Dict. title Efray.

WAIF, Plaything.] A Cart, Waggon, or Plough to till land.

WAIBLE, i.e. That may be pleaded or managed; and allowable. Chart. Antiqu.

WAINE; see Gainage.

To WAIVE, Wasteware.] In the general signification, is to forrove; but is spatially applied to a woman, who, for any crime for which a man may be outlawed, is termed waived. Reg. Orig. 132. See title Outlawry.

WAIVER. The putting by of a thing, or a declining or refusal to accept it. Sometimes it is applied to an estate or some thing conveyed to a man, and sometimes to a priest, &c. A Waifer or disclaimment as to goods and chattels, in case of a gift, will be effectual. Lit. § 710.

If a jointure of lands be made to a woman after marriage, she may waive this after her husband's death. 3 Rep. 27.

An infant, or, if he die, his heirs, may by Waifers avoid an estate made to him during his minority. 1 Inst. 23, 348. But where a particular estate is given with a remainder over, there regularly he that hath it may not waive it, to the damage of him in remainder: Though
it is otherwise where one hath a reversion, for that shall not be hurt by such Waiver, 4 Steph.Abr. 192. After speciallifue joined in any action, the parties cannot waive it without motion in Court. 1 Keb. 225. Assignment of error by Attorney on an Oustlory, ordered to be waived, and the party to assign in person, after demurrer for this cause. 2 Keb. 15. See title Disclaimer.

WAKE, The soe-feast of the Dedication of Churches; which, in many country places, is observed with feasting and rural diversions, &c. Parah. Antiqu. 629.

WAKEMAN, qabf Watchman. The Chief Magistrate of the town of Ripon in Yorkshire, is so called. Canm.

WALES, Wallis.] Part of Great Britain, on the West side of England, formerly divided into three provinces, North-Wales, South-Wales, and West-Wales: and inhabited by the offspring of the ancient Britons, chiefly the Saxons, called in to affit them against the Picts and Scots. Laws: Stat, Wallis, 12 Edw. 1.

England and Wales were originally but one nation, and so they continued till the time of the Roman conquest: but when the Romans came, those Britons who would not submit to their yoke, betook themselves to the mountains of Wales: from whence they came again soon after the Romans were driven away by their dissensions here. After this came the Saxons, and gave them another disturbance; and then the kingdom was divided into an Heptarchy: and then also began the Welsh to be distinguished from the English. Yet it is observable, that though Wales had Princes of their own, the King of England had superiority over them, for to him they paid homage. Canm: 2 Mod. 11. See further, 1 Comm. Introd. § 4.

The Stat. 28 Ed. 3, ch. 2, annexed the Marches of Wales perpetually to the Crown of England, so as to be of the Prinicipality of Wales. And by Stat. 27 Hen. 8, c. 26, Wales was incorporated into, and united with, England: All persons born in Wales are to enjoy the like liberties as those born in England, and lands to descend there according to the English Laws; The Laws of England are to be executed in Wales; and the King to have a Chancery and Exchequer at Brecon and Denbigh. Officers of Law and Ministers shall keep Courts in the English Tongue; and the Welsh Laws and Customs to be inquired into by Commission, and such of them as shall be thought fit continued, but the Laws and Customs of North Wales are saved. By Stat. 34 & 35 Hen. 8, c. 26, Wales was divided into 12 Counties, and a President and Council appointed to remain in Wales and the Marches thereof, with Officers, &c. Two Justices are to be appointed to hold a Session twice every year, and determine Pleas of the Crown and Affiliates, and all other Actions; and Justices of Peace shall be appointed as in England, &c. By Stat. 18 Eliz. c. 8, the King may appoint two Persons, learned in the Laws, to be Judges in each of the Welsh Circuits, which had but one Justice before; or grant Commissions of Assizes.

An Office for Inrollments was erected, and the fees and proceedings regulated, in calling Fines and Recoveries in Wales, by Stat. 27 Eliz. c. 6. Persons living in Wales may give and dispose of their goods and chattels, by will, in like manner as may be done within any part of the province of Canterbury, or elsewhere. Stat. 7 & 8 W. 3, c. 38. See title Wills, Jurors returned to try issues in Wales, to have the year of Freethold or Copyhold, above reprises; and none shall be held to Bail in Wales, unless Affidavit be made that the cause of Action is or upwards. Stat. 11 & 12 W. 3, c. 9. In Actions where the debit, &c. amounts not to 1L. in the Court of Great Sessions in Wales, the plaintiff shall give out a Writ of Quia Emptores, and serve the defendant with a copy eight days before holding the said Court, &c. who shall appear at the return, or before the third Court; or the plaintiff may enter an appearance, and proceed. Stat. 6 Geo. 2, c. 14.

By Stat. 20 Geo. 2, c. 42, § 2, in all cases wheres the Kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any Act of Parliament, the same has been and shall be taken to comprehend the Dominion of Wales, and town of Berwick. See that title.

Murders and Felonies in any part of Wales may be tried in the next English county. 1 Stat. 55. — A Certiorari lies to Wales, on Indictments for Maldemeanors. 1 Stat. 709. — A Habeas Corpus may be granted of course to remove a prisoner from Wales to an English county. 2 Stat. 545. — A Prohibition granted to the Great Sessions to stay a suit on a Summons served out of the jurisdiction. 1 Stat. 630. See further, titles Courts of Wales. Prince of Wales; and other apposite titles.

WALESHERIA; see Valesteria.

WALISCUIS, i.e. Servorum. A Servant, or any Ministerial Officer, Leg. Ine, c. 34.

WALKERS, Foresters, within a certain space of ground appurtained to their care, in Forestry, &c. Camp. 145.

WALL, S. A WALL, A Bank of Earth; see Water-gorges. Star-banks.


WALTHAM BLACKS; see title Black.

WANDERING SOLDIERS AND MARINERS; see Stat. 39 Eliz. c. 17, title Voyants.

WANG, Sax.] The Cheek, or Jaw wherein the teeth are set. See Seal.


WANLASS, or Drawing the Wanlass, is to drive Deer to a stand, that the Lord may have a shoot. An ancient customary tenure of lands. Black's Tit. 140.

WANT. As to justification of Thieves on account of extreme Want, see title Wolves i. 1.

WAPENTAKE, from the Sax. Wapen, i.e. Armature, &c. Tacitus. IS all one with what we call a Hundred; specially used in the North countries beyond the River Trent, Brad. 1. 32. Lamb. The words seem to be of Danish original, and to be so called for this reason; when first this kingdom, or part thereof, was divided into Wapentakes, he who was the Chief of the Wapentake or Hundred, and whom we now call a High Constable, as soon as he entered upon his office, appeared in the field on a certain day, on horseback, with a pike in his hand; and all the chief men of the hundred met him there with their lances, and touched his pike; which was a sign that they were firmly united to each other, by the touching their weapons. Holderen : Fleta, 14.
WAR

WAP

Wardens of the Tables of the King's Exchequer.—Warden of the Armour in the Tower.—Warden of the Rolls of the Chancery.—Warden of the King's Writs and Records of his Court of Common Bench.—Warden of the Lands for repairing Rickhoffer Bridge.—Warden of the Stannaries.—Warden and Minor Canons of St. Paul's Church.—Warden of the First Prison, &c. particularized in various Statutes. See Guardians.

WARDMOTNE, Warduman. A Court kept in every Ward in London; ordinarily called the Wardmote Court. The Wardmote Inquest hath power every year to inquire into and prefer all defaults concerning the Watch and Constables doing their duty; that engines, &c. are provided against fire; that persons selling ale and beer be honest, and suffer no disorders, nor permit gaming, &c. that they fall in lawful measures; searchers are to be made for vagrants, baggards, and idle persons, &c. who shall be punished. Chart, K. Hen. II. : Lex Land. 135. See titles London; Police.

WARDPENY, Money paid and contributed to Watch and Ward. Demiday.

WARDWIT, THE being quit of giving money for keeping of Wards. Terre de Loy.

WARDS, Court of: A Court first erected in the reign of King Henry VIII. and afterwards augmented by him with the office of Liveries; wherefore it was filed the Court of Wards and Liveries; now discharged by Stat. 12 Car. 2. c. 24. See title Tenants.

WARD-Staff. The Constable or Watchman's Staff. The manor of Longbourn in Essex is held by the service of the Ward-staff, and watching the same in an extraordinary manner, when it is brought to the town of Alfriston. Camden.

Warenae, To plough up land designed for wheat in the spring, in order to let it lie fallow for better improvement; which in Kent is called Summerland: Hence Warenaeable Campus, a fallow field; Campus at Wareham, Terra Warenae, &c.


WARRANT, A Warrant of Attorney, An authority and power given by a Client to his Attorney, to appear and plead for him; or to suffer judgment to pass against him by confessing the action, by nil dignis, non jure informationis, &c. And although a Warrant of Attorney given by a man in custody to confess a judgment, to Attorney being present, is void as to the entry of a judgment; yet it may be a good Warrant to appear and the Common Bail. 2 Bell. Abr. 582. A Warrant of Attorney which warrants the action is of course put in by the Attorneys for the plaintiff and defendant; so that it differs from a Letter of Attorney, which passes ordinarily under the hand.
and tell of him that makes it, and is made before witnesses, &c. Though a Warrant or Attorney to suffer a Common Recovery by the Tenant, is acknowledged before such persons as a Commission for the doing thereof directs. Pith. Synb. par. 2. See titles Attorney; Judgment acknowledged; Recovery, &c.

WARRANTIA. A Writ where a man is enooffed of lands with Warranty, and then he is sued or imploed in Affidavit or other action, in which he cannot vouch or call to Warranty. By this Writ he may compel the Feoffor or his Heirs to warrant the land unto him, and if the land be recovered from him, he shall recover as much lands in value against the Warrantor, &c. But the Writ ought to be brought by the Feoffee depending the first Writ against him, or he hath lost his advantage. F. N. B. 134. Terms at R. 372, 598. See title Plaishing, 11.

If a person doth enooff another of lands by deed with Warranty, and the Feoffee make a feuoffment over, and taketh back an estate in fee, the Warranty is determined, and he shall not have the Writ Warrantia Chartae, because he is in of another estate. Also where one makes a Feoffment in Fee with Warranty against him and his Heirs, the Feoffee shall not have a Warrantia Chartae upon this Warranty against the Feoffor or his Heirs, if he be imploed by them; but the nature of it is to rebat against the Feoffor and his Heirs. Dall. 43: 2 Litt. 683.

This Writ may be sued forth before a man is imploed in any Action, but the Writ doth suppose that he is imploed; and if the defendant appear and say that he is not imploed, by that plea he confesteth the Warranty, and the plaintiff shall have judgment, &c.; and the party shall recover in value of the lands against the voucher, which he had at the time of the purchase of his Warrantia Chartae; and therefore it may be good policy to bring it against him before he is sued, to bind the lands he had at that time; for if he have aliened his lands before the voucher, he shall render nothing in value. New Nat. Br. 292, 299.

If a man recover his Warranty in Warrantia Chartae, and after he is imploed, he ought to give notice to him against whom he recovered, of the Action, and pray him to shew what plea he will plead, to defend the land, &c. Where upon a Warranty doth vouch and recover in value, if he is then imploed of the land recovered, he may not vouch again, for the Warranty was once executed. 23 Edw. 3. 12. In a Warranty to the Feoffee in land, made by the Feoffee; upon voucher, if special matter be shewn by the voucher, when he entered into the Warranty, viz. that the land at the time of the feuoffment was worth only 100l. and now at the time of the voucher it is worth 200l by the industry of the Feoffee; the plaintiff in a Warrantia Chartae, &c. shall recover only the value it was at the time of the feoffment. Jack. Com. 155.

If the voucher can shew cause why he should not warrant, that must be tried, &c. See title Recovery.

WARRANTIA DIEL. An ancient Writ, where one having a day assign'd personally to appear in Court to any Action, is in the mean time employed in the King's service, so that he cannot come at the day appointed; it was directed to the Justice to this end, that they neither take nor record him in default for that time. Reg. 52. 18: F. N. B. 17. See titles Effetio; Protection.

WARRANTY.

WARRANTY. A Prowise or Covenant by deed by the bargainer, for himself and his heirs, to warrant or secure the bargainee and his heirs, against all men, for the enjoying of the thing granted. Bradl. lib. 2 sect. 5: Pith. Synb. par. 1.

As applied to Lands, it is defined to be a Covenant-real annexed to Lands or Tenements, whereby a man and his Heirs are bound to warrant the same; and either upon voucher, or by judgment in a Writ of Warranty Chartae, to yield other Lands and Tenements, to the value of those that shall be evicted by a former title; or else may be used by way of rebuttal. 1 plig. 307; a. See Litt. 467; and Mr. Bucat's Note there on the subject of Warranty. See also this Dictionary, title Deed; Tenants 1. 7: Recovery, &c.

The doctrine of Warranty, obnoxious as it now is, and rather a matter of speculation than use, is considered by the learned Editor of The First Instruct, as having still a powerful influence on our landed Property: The following matter therefore, on this subject, is here introduced from 2 Comm. c. 20.

By the Clause of Warranty in a Deed, the Grantor doth, for himself and his Heirs, warrant and secure to the Grantee the estate so granted. By the Feodal Constitution, if the Vassal's title to enjoy the Feud was disputed, he might vouch, or call, the Lord or Donor, to warrant or insure his gift; which if he failed to do, and the Vassal was evicted, the Lord was bound to give him another Feud of equal value in recompense. And so, by our ancient Law, if, before the statute of Quia emptoris, a man enooffed another in fee, by the Feodal verb dedi, to hold of himself and his Heirs by certain services; the Law annexed a Warranty to this grant, which bound the Feoffor and his Heirs, to whom the services (which were the consideration and equivalent for the gift) were originally stipulated to be rendered. Co. Litt. 384. Or, if a man and his ancestors had immemorially held land of another and his successors by the service of homage, (which was called Homage Annuitatis,) this was also bound the Lord to Warranty, the homage being an evidence of such a Feodal grant. Litt. § 143. And, upon a similar principle, in cases, after a partition or exchange of lands of inheritance, either party or his Heirs be evicted of his share, the other and his Heirs are bound to Warranty, because they enjoy the equivalent. Co. Litt. 174.

And so, even at this day, upon a Gift in Tail, or Lease for Life, rendering rent, the Donor or Lessee, and his Heirs, (to whom the rent is payable,) are bound to warrant the title. 1 plig. 394. But in a Feoffment in Fee by the verb dedi, since the statute of Quia emptoris, the Feoffor only is bound to the implied Warranty, and not his Heirs; because it is a mere personal contract on the part of the Feoffor, the tenure (and of course the ancient services) resting back to the superior Lord of the Fee, 1 plig. 384. And in other forms of alienation gradually introduced since that statute, no Warranty whatsoever is implied, they bearing no sort of analogy to the original Feodal donation. 1 plig. 102. And therefore, in such cases, it became necessary to add an express clause of Warranty, to bind the Grantor and his Heirs; which is a kind of Covenant-real, and can only be created by the verb warrantia or warrant; Litt. § 733.
**WARRANTY.**

These express Warranties were introduced, even prior to the statute of **Quia Emptores**, in order to evade the strictness of the Feudal doctrine of Non alienation without the consent of the Heir. For though he, at the death of his ancestor, might have entered on any tenements that were aliened without his concurrence, yet, if a clause of Warranty was added to the ancestor's grant, this covenant dependant upon the Heir, injured the Grantee, not so much by confirming his title, as by obliging such Heir to yield him a reconnoitre in lands of equal value; the Law, in favour of alienations, supposing that an ancestor would voluntarily disinherit his next of blood and therefore presuming that he had received a valuable consideration, either in land, or in money which had purchased land, and that this equivalent depended upon the Heir, together with the Ancestor's Warranty. *Co. Litt.* 373. So that when either an Ancestor, being the rightful Tenant of the Freehold, conveyed the land to a Stranger and his Heirs, or released the right in Fee-simple to one who was already in possession, and super-added a Warranty to his deed, it was held that such Warranty not only bound the Warrantor himself to protect and assure the title of the Warrantee, but it also bound his Heir; and this, whether that Warranty was **lineal** or collateral to the title of the land. **Lineal** Warranty was, where the Heir derived, or might by possibility have derived, his title to the land warranted, either from or through the Ancestor who made the Warranty; as where a Father, or an elder Son in the life of the Father, released to the Diffieror of either themselves or the Grandfather, with Warranty, this was **lineal** to the younger Son. *Litt.* §§ 705, 706, 707. **Collateral** Warranty was, where the Heir's title to the land neither was, nor could have been, derived from the warranting Ancestor; as where a younger Brother released to his Father's Diffieror, with Warranty, this was **collateral** to the elder Brother. *Litt.* §§ 705, 707. But where the very Conveyance, to which the Warranty was annexed, immediately followed a Diffierin, or operated itself as such, (as, where a Father, tenant for Years, with remainder to his Son in Fee, aliened in Fee-simple with Warranty,) this being, in its original, manifestly founded on the tort or wrong of the Warrantor himself, was called a Warranty commencing by Diffierin; and, being too palpably injurious to be supported, was not binding upon any Heir of such tortious Warrantor. *Litt.* §§ 688, 701.

In both **lineal** and **collateral** Warranty, the obligation of the Heir (in case the Warranty was ex[ed], to yield him other lands in their stead) was only on condition that he had other sufficient lands by descent from the warranting Ancestor. *Co. Litt.* 162. But though, without assents, he was not bound to infure the title of another, yet, in case of lineal Warranty, whether assents descended or not, the Heir was perpetually barred from claiming the land himself; for, if he could succeed in such claim, he would then gain assents by defect, (if he had them not before,) and must fulfill the Warranty of his Ancestor. And the same rule was, with less justice, adopted also in respect of collateral Warranties, which likewise (though no assents descended) barred the Heir of the Warrantor from claiming the land by any collateral title, upon the presumption of Law that he might hereafter have assents by defect either from or through the same Ancestor. *Litt.* § 711, 712. The inconvenience of a latter branch of the rule was felt very early, when Tenants by the Curtesy took upon them to alien their lands with Warranty; which collateral Warranty of the Father descendong upon his son, (who was the Heir of both his Parents,) barred him from claiming his maternal inheritance. To remedy which, the statute of **Gloucester**, *flat. 6 Edw. 1.* c. 5, declared that such Warranty should be no bar to the Son, unless assents descended from the Father. It was afterwards attempted in *5 Edw. 3.* to make the same provision universal, by enacting that no collateral Warranty should be a bar, unless where assents descended from the same Ancestor; but it then proceeded not to effect. *Co. Litt.* 373. However, by *flat. 11 H. 7.* c. 20, notwithstanding any alienation with Warranty by Tenant in Dower, the Heir of the Husband is not barred, though he be also Heir to the Wife. And by *flat. 4 & 5 Ann.* c. 16, all Warranties by any tenant for Life shall be void against those in remainder or reversion, and all collateral Warranties by any Ancestor who has no estate of inheritance in possession, shall be void against his Heir. By the wording of which last statute it should seem, that the Legislature meant to allow, that the collateral Warranty of Tenants in Tail in possession, descending (though without assents) upon a Remainderman or Reversioner, should fill bar the remainder or reversion. Per though the Judges, in expounding the statute *De donis*, held that, by analogy to the statute of **Gloucester,** a collateral Warranty by Tenant in Tail without assents should not bar the Issue in Tail, yet they held such Warranty with assents to be a sufficient bar. *Litt.* § 712. *2 Edw. 3.* 203. Which is therefore one of the ways whereby an Estate-tail may be destroyed; it being indeed nothing more in effect, than exchanging the lands entailed for others of equal value. See titles Tail and Fee-tail.---They also held, that collateral Warranty was not within the statute *De donis*; as that Act was principally intended to prevent the Tenant in Tail from disinheritting his own Issue; and therefore collateral Warranty (though without assents) was allowed to be, as at Common Law, a sufficient bar of the Estate-tail and all remainders and revocations expectant thereon. *Co. Litt.* 374. *2 East.* 335. And so it still continues to be, notwithstanding the statute of **Queen Anne,** if made by Tenant in Tail in possession; who therefore may now, without the forms of a Fine or Recovery, in some cases, make a good conveyance in Fee-simple, by superadding a Warranty to his grant; which, if accompanied with assents, bars his own Issue; and, without them, bars such of his Heirs as may be in remainder or reversion. *2 Comm.* c. 20, p. 303.

As to Warranty of Things Personal:---By the Civil Law, an implied Warranty was annexed to every sale, in respect to the title of the Vendor: And so too, in our Law, a Purchaser of Goods and Chattels may have a satisfaction from the Seller, if he sells them as his own, and the title proves defective, without any express Warranty for that purpose. *Coy. Yan.* 474; *1 Ro. Ab.* 90. But, with regard to the goodness of the wares so purchased, the Vendor is not bound to answer; unless he expressly warrants them to be found and good; or unless he knew them to be otherwise, and hath used any art to disguise them; or unless they turn out to be different from what he represented to the buyer. *F. N. B.* 94; *2 Rull. Rep.* 51; *2 Comm.* c. 10, the title Deciret.

The following distinctions (see particularly the sale of Horses) If the Purchaser gives what is called
called a fixed price, that is, such as, from the appearance and nature of the horse, would be a fair and full price for it, if it were in fact free from blemish and vice; and he afterwards discovers it to be unfound or vicious, and returns it in a reasonable time; he may recover back the price he has paid, in an action against the Seller for so much money had and received to his use, provided he can prove the Seller knew of the unfoundness or vice at the time of the sale: For the concealment of such a material circumstance is a fraud which vacates the contract. But if a Horse is sold with an express Warranty by the Seller, that it is found and free from vice, the Buyer may maintain an Action upon this Warranty or Special Contract, without returning the Horse to the Seller, or without even giving notice of the unfoundness or vice at the time of the sale.

WAR,

This Franchise is almost fallen into disregard, since the new statutes for preserving the Game; the name being now chiefly preferred in grounds set apart for breeding Hares and Rabbits.

WARSCOT, A Contribution usually made towards Armour, in the time of the Saxons. See LX. Canat.

WARTHE, A customary payment for Castle-guard. See Blunt's Ten. 60.

WASH, A shallow part of a river, or arm of the Sea. See the Washes in Lincolnshire. Sec. Knight 1346.

WASSAIL, A festival song, hereafter sung from door to door about the time of the Epiphany. See Wafel-bowl.

WAST, a word derived from Ger. wagen, to bear on, to pronounce.

A Franchise, or place privileged by prescription or grant from the King, for the keeping of hawks and falves of the Warren, which seem to be only Hares and Conies, Partridges and Pheasants; though some add Quails, Woodcocks, and Water-fowl, &c. Terres de Ley 589: 1 Bl. Com. 233: 2 Comm. c. 3, in n. A person may have a Warren in another's land, for one may alien the land, and reserve the Franchise: But one may not make a Warren, and appropriate those creatures that are Fora Naturae, without licence from the King, or where a Warren is claimed by prescription. 8 Rep. 108: 11 Rep. 87. A Warren may be open; and there is no necessity of inclosing it, as there is of a Park. 4 Bl. Com. 318. If any person offend in a Free Warren, he is punishable by the Common Law. If any one enter wrongfully into any Warren, and chase, take, or kill any Conies, without the consent of the Owner, he shall forfeit Treble Damages, and suffer Three Months' Imprisonment, &c. Stat. 22 & 23 Car. 2. c. 25. See also title Landscy. When Conies are killed in the party, he hath a property in them by reason of the pooffession: and Action lies for killing them; but if they run out of the Warren, and eat up a neighbour's corn, the Owner of the land may kill them, and no Action will lie. 5 Rep. 104: 1 Cro. 548. In Waite, &c. against a Leafee of a Warren, the Waite assigned was for stopping Coney-boroughs; and it was held that this Action did not lie, because a man cannot have the inheritance of Conies; and Action may be brought against him who makes holes in the land, but not against him who stops them, by reason the land is made better by it. Owen 56.

Blackstone says, A man that has a Franchise of Warren is in reality no more than a Royal Game-keeper: And adds, that no man, not even a Lord of a Manor, could by Common Law justifyспорting on another's soil, or even on his own, unless he had the liberty of Free Warren. 2 Comm. c. 3. This latter position is very earnestly combated by Mr. Christian. See this Dit. title Game-Laws.
WASTE I.

against a tenant for an accident of this kind. See p. 217. Waste may also be committed in ponds, dove-houses, warrens, and the like; by so reducing the number of the creatures therein, that there will not be sufficient for the reversioner when he comes to the inheritance. Co. Lit. 53. Timber also is part of the inheritance. 4 Rep. 62. Such are oak, ash, and elm in all places; and in some particular countries, by local custom, where other trees are generally used for building, they are for that reason considered as timber; and to cut down such trees, or to use them, or do any other act whereby the timber may decay, is Waste. Co. Lit. 53. See title Timber.—But under the tenant may cut down at any reasonable time that he pleases; and may take sufficient cuttings of common right for house, bote and cart-bone; unless restrained (which is usual) by particular covenants or exceptions.

2 Roll. Abr. 817: Co. Lit. 41. The conversion of land from one species to another is Waste. To convert wood, meadow, or pasture, into arable; to turn arable, meadow, or pasture, into woodland; or to turn arable or woodland into meadow or pasture; are all of them Waste. Hob. 296. For, as Coke observes, it not only changes the course of husbandry, but the evidence of the estate; when such a close, which is conveyed and described as pasture, is found to be arable, and 2 coverture, 1 Inst. 53. And the same rule is observed, for the same reason, with regard to converting one species of edifice into another, even though it is improved in its value. 1 Lev. 309. To open the land to search for mines of metal, coal, &c. is Waste; for that is a detriment to the inheritance; but if the pits or mines were open before, it is no Waste for the tenant to continue digging them for his own use; for it is now become the mere annual profit of the land. 5 Rep. 12: Hob. 295. These three are the general heads of Waste, viz. in Heales, in Timber, and in Land. Though, whatever else tends to the destruction, or depreciating the value of the inheritance, is considered by the Law as Waste. 2 Comm. c. 18. Which we therefore proceed to state more at large.

It has been laid down as a general principle, that the Land will not allow that to be Waste, which is not in any way prejudicial to the inheritance. Inst. 53. Nevertheless it has been held, that a Lease or Tenant cannot change the nature of the thing demised; though, in some cases, the alteration may be for the greater profit of the Lease. Thus if a Lease converts a Corn-mill into a Fulling-mill, it is Waste; although the conversion be for the Lease's advantage. Cro. Jacq. 182. So the converting a Brewhouse of 120l. per annum, into other Houses let for 200l. a year, is Waste; because of the alteration of the nature of the thing, and of the evidence. 1 Lev. 309.

WASTE IN LANDS.—It hath been already stated, that if a Tenant converts Arable into Wood, or 2 coverture, it is Waste; for it not only changes the course of husbandry, but also the proof of evidence. Hob. 296. pl. 244. But if a Leaseholder or Tenant converts a Corn-mill into a Fulling-mill, it is Waste; although the conversion be for the Lease's advantage. 2 Roll. Abr. 814. Likewise the conversion of Meadow into Arable is Waste. 1 Inst. 534. But if Meadow be sometimes Arable, and sometimes Meadow, and sometimes Waste, there the plowing of it is not Waste. 2 Roll. Abr. 815. Neither is the division of a great Meadow into many parcels, by making of Ditches, Waste; for the Meadows may be better for it, and it is for the profit and use of the occupiers of it. 2 Lev. 174. pl. 210.

Likewise converting a Meadow into a Hop-garden, is not Waste; for it is employed to a greater profit, and it may be Meadow again; per Windham and Rhodes, 11. But Petition said, though it be a greater profit, yet it is also with greater labour and charges. 2 Lev. 174, pl. 210. But converting a Meadow into an Orchard, is Waste, though it be to the greater profit of the occupier. Pet. Petition. Id. ibid. If a Leaseholder ploughs the land flooded with Cones, this is no Waste; unless it be a Waste by charter or prescription. 2 Roll. Abr. 815. So if a Leaseholder converts the Coney-boroughs in the land, it not being a free Warren by charter or prescription, it is not Waste; for a man can have no property in them, but only a pinted. Id. ibid. 50.

It is Waste to suffer a wall of the sea to be in decay, so as by the flowing and running of the sea the meadow or marsh is surrounded, whereby the same becomes unprofitable. But if it be surrounded suddenly by the rage and violence of the sea, occasioned by wind, tempest, or the like, without any default in the tenant, this is not Waste. Yet if the tenant repair not the banks or walls against rivers or other waters, whereby the meadows or marshes be surrounded and become ruinous and unprofitable, this is Waste. 1 Inst. 53. 6. So a fortiori, if arable land be surrounded by such default; for the surrounding wasters away the marble and other maintenance from the land. 2 Roll. Abr. 816.

WASTE IN TREES and WOODS. Trees are parcel of the inheritance; and therefore, if a Leaseholder assigneth his term, and excepts the Timber-trees, it is void; for he cannot except that which doth not belong to him by Law. 5 Rep. 12. The Lessee, after he has made a lease for life or years, may by deed grant the Trees, or reasonable cuttings of common right for house, bote and cart-bone; and the same shall take effect after the death of the Lessee. But such a gift to a stranger is void during the estate for life, because of the particular prejudice which might be done to the Lessee. 11 Rep. 48. The Lessee hath, but a particular interest in the Trees, but the general interest of the Trees doth remain in the Lessee; for the Lessee shall have the Waste and Fruit of the Trees, and the ownership for his cattle, and the like. But the interest of the body of Tree is in the Lessee, as parcel of his inheritance. Therefore if Trees are overthrown by the Lessee or any other, or by wind or tempest, or by any other means disjoined from the inheritance, the Lessee shall have them in respect of his general ownership. 11 Rep. 81.

With respect to Timber-trees, such as Oak, Ail, Elm, (which are Timber-trees in all places,) Waste may be committed in them, either by cutting them down, or lopping of them, or doing any act whereby the Timber may decay. Also in countries where Timber is scarce, and Beeches or the like are converted to building for the habitation of man, they also are accounted Timber. 1 Inst. 53, 47; 54, 6. Thus, Waste may be committed in cutting of Beeches in Berkshire, because there by the custom of the country it is the bent Timber. 2 Roll. Abr. 815.

So, Waste may be committed in cutting of Biches in Berkshire, because they are the principal Trees there for the most part. 2 Roll. Abr. 814. If the Tenant cut down Timber-trees, or such as are accounted Timber, as mentioned,
tioned above, this is Waste; and if he suffers the young Germins to be destroyed, this is Destruction. So it is, if the Tenant cuts down Underwood (as he may by Law), yet if he suffers the young Germins to be destroyed, or if he flub up the same, this is Destruction. If a Termor cuts down Underwood of Hazel, Willows, Maple, or Oak, which is seizable, it is not Waste. If the Trees are seizable Wood to cut from ten years, it is not Waste to cut them down for house-boot. But if the Trees are gros of the age of nine years, and able for great Timber, it is Waste to cut them down. 2 Roll. Abr. 877.

If Oaks are seizable, and have been used to be cut always at the age of twenty years, it is not Waste to cut them at such age, or under; for in some countries, there is a great plenty, Oaks of such age are but seizable Wood. But, after the age of twenty-one years, Oaks cannot be said to be Wood seizable, and therefore it shall be Waste to cut them down. 2 Roll. Abr. 877.

Cutting down of Willows, Beech, Birch, Ash, Maple, or the like, standing in the defence and safeguard of the house, is Destruction. If there be a quicker-drying white-thorn, if the tenant flub it up, or suffer it to be destroyed, this is also Destruction: And for all these and like Destructions an Action of WASTE lieth. 1 Inst. 53, a. The cutting of Horn-beams, Hazels, Willows, Sallows, though of forty years growth, is no Waste, because these Trees would never be Timber. Co. 2, pl. 6.

If the Leese-fiej covenant, that he will leave the Wood at the end of the term as he found it; if the Leese-cut down the Trees, the Leesor shall presently have an Action of Covenant: For it is not possible for him to leave the Trees at the end of the term. So that the impossibility of performing the covenant shall give a present action on a future covenant. But it is otherwise in the case of a house; for there, though the Leesor commit Waste, yet he may repair the Waste done, before the term expires. 5 Rep. 21.

The cutting down of Trees is justifiable for house-boot, hay-boot, plow-boot, and fire-boot. 1 Inst. 53, b. Hob. Rep. c. 195: Bro. Waste, 130. By the Common Law, Leese shall have them, though the deed does not express it; but if he takes more than is necessary he shall be punished in Waste. Bro. Waste, pl. 30. The tenant may take sufficient Wood to repair the walls, pales, fences, hedges, and ditches, as he found them; but he cannot make new. Cutting of dead Wood is no Waste. But converting Trees into Fuel, when there is sufficient dead Wood, is Waste. 1 Inst. 53, b.

Cutting Wood to burn, where the tenant has sufficient Hedge-wood, is Waste. F. N. B. 59 (M). Where Leese has years power to take Hedge-boot by alignment, yet he may take it without alignment; for the affirmative does not take away the power which the Law gives him. D. 19, pl. 115. If Leesor excepts his Trees in his lease, the Leese-shall not have Fire-boot. Hay-boot, &c. which he should have otherwise; and the property of the Trees is in the Leesor himself. 4 Le. 162, pl. 269. Sir Richard Leake's cafe. Yet it has been said, that Leesor for years, the Trees being excepted, has liberty to take the br由于and lop-pings for Fire-boot; but if he cuts any Tree, it shall be Waste, as well for the lopping as for the body of the Tree. Noy. 29. If a Tenant that has Fire-boot to his house in another man's land, cuts Wood for that intent to make his Bote-wood, and the owner of the land takes it away, an Action of Trover and Conversion lies against him by the Tenant of the land who hath such Fire-boot. Cl. 40, pl. 69. Coram Berkeley, Annu. See 3 Dyer 36, pl. 38; Cl. 47, pl. 51: 1 Lev. 171.

If, during the estate of a mere tenant for life, Timber is ferever either by accident or by wrong, it belongs to the first person who has a vested estate of inheritance: But where there are intermediate contingent estates of inheritance, and the Timber is cut down by a combination between the Tenant for Life, and the person who has the next vested estate of inheritance; or if the Tenant for Life, and the person who has the next vested estate of inheritance, it is not necessary for him to use without selling, it is not Waste. If a man hath land in which there is a Mine of Coals, or the like, and makes a lease of the land (without mentioning any mines) for life or for years, the Leesor, to such Mines as were open at the time of the lease made, may dig and take the profits thereof. But he cannot dig for any new Mine that was not open at the time of the lease made, for that would be adjudged Waste. Likewise, if there be open Mines in the land, and the Owner leaves it to another, with the Mines in it, he may dig in the open Mines, but not in the close mines; but otherwise it would be if there was not any open Mine there: for then the Leesor might dig for Mines, otherwise the grant would take no effect. 1 Inst. 54, b. If Leesor dig Slate-stone out of the land, it is Waste: So digging for Stones, unless in a Quarry, is Waste, though the Leesor fills it up again. 2 Roll. Abr. 816: Q. 56. Likewise, if he have a lease of land, in which there was a Coal Mine, but not open at the time of the lease; if the Leese open it, it affiges his interest, it is still Waste in the Allignance: but where the lease is of lands, and all Mines in it, there he may dig in it. 5 Rep. 12, a. b.

But if Leesor of land, with Mines of Coals, Iron, and Stone, digs the Coals, Iron, and Stones, to much as is necessery for him to use without selling, it is not Waste. If a Leesor digs Earth, and carries it out of the land, Action of Waste lies. 2 Roll. Abr. 816. If a Leese digs for Gravel or Clay, for reparation of the house, not being open at the time of the lease, it is not Waste, any more than the cutting of Trees for reparation. 1 Inst. 53, b.

If a man leaves lands with general words of "all Mines of Coals," where there is not any Mine of Coals open at the time of the lease, and after the Leesor opens a Mine, he cannot justify the cutting of Timber-trees for making punchens, cofbes, roll-scoops, and other utensils in and about the Mine, though without them he could not dig and get the Coals out of the Mine; and this is like a new house built after the demise, for the reparation of which he cannot take Timber upon.
Upon the land, and it had been Waste to open it, if it had not been granted by express words: And it was held by Hobart, that the law had been the same if the mine was open at the time of the demise. Hobart 296: 2 H. 19.

Waste in Gardens, Orchards, Fish-ponds, Dove-houses, Parks, &c. — If the tenant cut down or destroy any fruit-trees growing in the garden or orchard, it is Waste: But if such trees grow upon any of the ground, which the tenant holdeth out of the garden or orchard, it is no Waste. 1 In. 53, a. Breaking a hedge also is no Waste. 1 In. 53, a. Destruction of Saffron-heads in a garden, is not Waste. Bro. Waste, pl. 143, cited to 1 H. 7, c. 2. If the tenant of a Dove-house, Warren, Park, Viary, Eflanges, or such like, takes so many that so much more is not left as he found at the time of the demise, it is Waste. 1 In. 53, a: Hob. Rep. c. 296. Likewise, if the Leñee of a Pigeon-house stuggles the holes, that the pigeons cannot build, it is Waste. So suffering the Pales of a Park to decay, whereby the Deer are dispersed, is Waste. 1 In. 53, a. Also, if the Leñee of a Hop ground plow it up and sow grain there, it is Waste. 60, Myle v. Myle.

The breaking a Weare is Waste, or the Banks of a Fish-pond, so that the water and fish run out. Ow. 66.

Waste with respect to Houses. Waste may be done in Houses, by pulling down them or prostrating them, or by suffering the same to be uncovered, whereby the spars or rafters, planchers or other timber of the House are rotten. 1 In. 53, a. — Default of Coverture of an House is Waste, though the timber be standing. 2 Rol. Abr. 815, But if the house be uncovered, when the tenant cometh in, it is no Waste in the tenant to suffer the same to fall down. Though there be no timber growing upon the ground, yet the tenant, at his peril, must keep the houses from falling. 1 In. 53, a. If a Leñee raises the House, and builds a new House, if it be not so long and wide as the other, it is Waste. 2 Rol. Abr. 815. So, if he rebuilds it more large than it was before, it is Waste; for it will be more charge for the Leñor to repair it. 1 In. 53, a.

But if a Leñee of land makes a new House upon the land where there was not any before, this is not Waste; for it is for the benefit of the Leñor. 1 Rol. Abr. 815. Though, according to Coke, if the tenant build a new House, it is Waste; and if he suffer it to be wasted, it is a new Waste. Yet, if the house be prostrated by enemies or the like, without default of the tenant, or was ruinous at his coming in, and fall down, the tenant may build the same again with such materials as remain, and with the other timber, which he may take growing on the ground, for his habitation; but he must not make the house larger than it was. 2 Rol. Abr. 815: 1 In. 53, a. If the house be uncovered by tempest, the tenant must in convenient time repair it. 1 In. 53, a. If a Leñee builds down a Wall between a Parlor and a Chamber, by which he makes a Parlor more large, it is Waste; it cannot be intended for the benefit of the Leñor, nor is it in the power of the Leñee to transpoze the House. 2 Rol. Abr. 815. So, if he pulls down a Partition between Chamber and Chamber, it is Waste. Bro. Waste, 143. Or if a Leñee pulls down a Hall or Parlour, and makes a Stable of it, it is Waste. If a Leñee pulls down a Garret over head, and makes it all one and the same thing, it is Waste. If a Leñee permits a Chamber fore to discofa pro defecta plantationis, per quod grammum maderiam devinit patridum, & camera illa ter- tifina & fondifina devinit, Action of Waste to be brought. So, if a Leñee permits the Wall to be decay for default of daubing, per quod maderiam devinit patridum, Action of Waste lies. 2 Rol. Abr. 815. Breaking of a Pale or of a Wall uncovered, is not Waste. But breaking of a Wall covered with thatch, and of a Pale of timber covered, is Waste. Bro. Waste, pl. 94.

If the tenant do, or suffer, Waste to be done in his Houses, yet if he repair them before any action brought, there like no action of Waste against him; but he cannot plead quod nun facit va fluctum, but the special matter. 1 In. 53, a.

It may be of use here to add something on the progress of the Law, as to the accidental burning of Houses, so far as regards Landlord and Tenant. At the common Law, Leñees were not answerable to landlords for accidental or negligent burning; for so to fires by accident, it is so expressed in Eleta, lib. 1, c. 12; and Lady Shrewsbury's case, 5 Rep. 13, b., is a direct authority to prove that Tenants are equally excusable for fires by negligence. Then came the Statute of Gloucester, (5 E. 1.) which by making Tenants for life and years liable to Waste without any exception, consequent rendered them answerable for destruction by fire. This stood the Law in Lord Coke's time: But now, by Stat. & Ann. c. 31, [the provisions of which are contained in the last building of Act; see this Dictionary, title Fire.] the ancient Law is restored, and the distinction, introduced by the Statute of Gloucester, between Tenants at will and other Leñees, is taken away; for the Statute exempts all persons from actions for accidental fire in any house, except in the case of special agreements between Landlord and Tenant. So much relates to Tenants coming in by Act or agreement of parties. — As to Tenants of particular estates coming in by Act of Law, as Tenant by the Curtesy, Tenant in Dower, and (before the Statute taking away Military Tenures) Guardian in Chivalry; these, or at least the two latter, being, at common Law, punishable for Waste, were therefore responsible for losses by Fire; unless indeed they were answerable for Waste voluntary only, and not for Waste permittit; a distinction not found in the Books. If these Tenants in Curtesy or Dower were, at common Law, responsible for accidental Fire, it may, some time or other, become necessary to determine whether they are within the Statute of Anne. — The Statute, in expression, is very general, and seems calculated to take away all actions in cases of accidental Fire, as well from other persons as from Landlords. — N.B. It has been doubted on the Statute of Anne, whether a covenant to repair generally extends to the case of fire, and so becomes an agreement within the Statute; and therefore, where it is intended that the Tenant shall not be liable, it is most usual, in the covenant for repairing, to except Accidents by Fire. 1 In. 57, in u.

But if a Leñee covenants to pay Rent, and to repair, with an express exception of Casualties by Fire, he may be obliged to pay rent during the whole term, though the premises are burned down by accident, and never rebuilt by the Leñor. 1 Term Rep. 310. See this Dict., titles Covenant of Rent; Leñee.

Waste in Things annexed to the Freehold. The removing a Folly in a house is Waste. 42 Edw. 3, 6. So, the removing of a Door. 1 In. 57. Or of a Window. 42 Edw. 3, 6. The digging up a furnace annexed to the
the frank-tenant, and selling it, is Waste. Bro. Waste, pl. 143. The removing of a Bench is Waste, though annexed by the Tenant himself. Bro. Waste, pl. 143; 1 Inst. 53, a. But there are such trifles that a Landlord would now scarcely obtain a Verdict in an Action of Waste, it being so very penal; unless very great injury was done by the act. At the Furnace he might maintain Trover for the value.—If Wainfocot, annexed to the house, he taken away, it is Waste. 1 Inst. 53, a. Of Tables dormant and fixed in the land, and not to the walls by the tenant, and taken off within his term, Waste does not lie for the house is not impaired by it. Bro. Waste, pl. 104.

Beating down a wooden Wall, or suffering a brick Wall to fall, is no Waste, unless it be expressly alleged, that the Walls were coped or covered. If Waste be affiaged in pulling up a Plank Floor, and Mangers of a Stable, the plaintiff must shew that the same were fixed. Dy. 108, b. pl. 31. If Lessor erects a Partition, he cannot break it down without being liable to an Action of Waste, for he has joined it to the frank-tenant. Mass. 176. Shelves are parcel of the house, and not to be taken away; and though it is not shown that the Shelves were fixed, it ought to be intended that they were fixed. 2 Bull. 113. Pavilion is a structure, for they use lime to finish. Id. ibid. If the Tenant suffers the Grounds to waste, in his default of defence or removing the water from off them, or through dirt or dung or other nuisance which lies or hangs upon it, the Tenant shall be charged, for he is bound to keep it in as good case as he took it. 1 Co. 43.

The Law, upon this part of the subject, has been relaxed: for during the term the Tenant may take away Chimney-pieces or Wainfocot, which he has put up; but not after the term, for he would then be a Treipuffer. 1 Atk. 477. A Fire-engine, erected by Tenant for life, shall go to his Executor. 3 Atk. 13. But the rule is different between the Heir and Executor, with regard to Fixtures upon the inheritance, that defend to the Heir. H. Black Rep. 258. See title Heir III. 3.

It may be observed in general, that Waste, which ensues from the act of God, is excusable; or rather, it is no Waste. Thus, if a House falls by Tempest, the Tenant shall be excused in Action of Waste; but if it be discovered by Tempest, and stands there, if the Tenant has sufficient timber to repair it, and does not, the Lessor, if the lease be made on condition of re-entry for Waste, may re-enter, but not immediately upon the Tempest, for it is no Waste until the Tenant suffers it to be so long unrepaired, that the timber be rooted, and then it is Waste. Bro. Cond. pl. 40.

Likewise, if a House be abated by Lightning, or thrown down by a great Wind, it is not Waste. 1 Inst. 53, a. So, if Apple-trees are torn up by a great Wind, if Lessor afterwards cuts them, it is not Waste. Bro. Waste, pl. 59. If the Banks are well repaired by the Lessor, and the Water, notwithstanding, subverts them, and surrounds his Meadow, by which it is become ruddy, it is not Waste. 2 Rull. Abr. 280: Centra, 20 H. 6. c. 1, b. The Lessor cannot give Trees during the Tenant's lease. But if he grants them to a stranger, and commands the Tenant to cut and deliver them, who does it, this shall excuse him in an Action of Waste. And yet the Tenant was not bound by Law to obey and execute this command. Br. Don. 185, 13.

If Tenant in Tail grants all his estate, his Grantee is dispunishable of Waste; so such Grantee's Grantee is also dispunishable: per Ch. J. 3 Le. 121, pl. 173. Ann. If a man devises land to two in Tail, and after the one Devisee dies without issue, by which the Revocation in Fee of one moiety reverts to the Heir of the Donor; but the other Devisee is Tenant for Life of the whole; and after he commits Waste, Action of Waste lies against him by the Heir of the Donor for the one moiety. New Abr. 49. But Action of Waste does not lie against Tenant in Tail after possiibility, for the leases of the estate of inheritance which was once in him: and also, as some say, because the estate was not within the statute at the creation.

If lands are given to the Husband and Wife, and to the Heirs of the body of the Husband, the remainder to the Husband and Wife, and to the Heirs of their two bodies begotten, and the Husband dies without issue: The Wife shall not be Tenant in Tail after possiibility; for the remainder in special Tail was utterly void, for that it could never take effect. For, so long as the Husband should have issue, it should inherit by force of the general Tail; and if the Husband die without issue, then the special Tail cannot take effect, inasmuch as the issue, which should inherit in special Tail, must be begotten by the Husband; and to the general, which is larger and greater, hath frustrated the special, which is less; and the Wife, in that case, shall be punished for Waste. 1 Inst. 28, b.

It has been agreed, that Tenant for years may cut Wood; but it has been doubted, if Tenant at will may; but it seems, that as long as Tenant at will is not countermanded he may cut reasonable Wood. 1st. Bro. Waste, pl. 114. Where a man leaves a Wood which consists only of great Trees, the Lessor cannot cut them. Hobart's Rep. Abb. 256. Nevertheless, if the Lessor cuts Trees for reparation, and sells them, and after buys them again, and employs them in reparation, yet it is Waste by the sale. So, if Lessor cuts Trees, and sells them for money, though with the money he repairs the House, yet it is Waste. 1 Inst. 53, b. As to the cutting of Timber trees for repairs by Lessor, there is no difference whether the Lessor or Lessor covenants to repair the Houses; for in either case it is not Waste, if Lessor cuts them. Mo. 29. pl. 80. Ann.

If a House be prostrated by Enemies of the King, or such like, without default of the Lessor, the Lessor may rebuild it again with the same materials that the House was made with; and may cut other Timber upon the land to rebuild it, but he must not make the House larger than it was. 1 Inst. 53, a. So, if the House was ruinous at the time of the lease, and fell within the term, this is not Waste in the Tenant, 1 Inst. 53, a. Bro. Waste, pl. 130. But the Lessor shall not cut Trees to make a new House where there was not any at the time of the lease. Hob. 256. So, if a Lessor suffers a House to fall for default of covering, which is Waste, he cannot cut Trees to repair the House. Bro. Waste, pl. 39. And in general, if the Tenant suffer the House to be wafted, he cannot justify the selling of Timber to repair it. 1 Inst. 53, b. If a House be ruinous at the time of the lease, though the Lessor is not bound to repair it, yet he may cut Trees to repair it. 1 Inst. 54, b.

The Tenant may likewise dig for Gravel or Clay for the reparation of the House, though the soil was not open when the Tenant came in; and it is justifiable as well as cutting.
WASTE II. I.

...tends to mangle and dismember it. of
...make a commoner, amounting to no less than a defiance of his estate war.ed: "James, 
...damage by Walle and waste; the
...possibility made liable by
...remainder or reversion, to whom
...waste, or a right of cutting and carrying away Wood for House-
...a Tenant in fee-simple, though
...makes liable by the
...by this commision of
...within the care for this
...ensue, for though the Reversioner takes
...in the estate of the
...but sometimes another may join with him. 1 Inf. 53, a; 285, a. It is said, that the
...for the Walle, and he in Reversion dies,
... inexpedient, be it the Tenantin Dower or by Curtesy, who was answerable for Walle at the
...the Tenant for life, but he who has the
...reversion, in Remainder or Reversion, expectant upon
...is entitled to an Action of Walle against a
...in fee, no Action of Walle lies against the first Leesee during the
...of Freehold to any person in oth, then, during the continuance of such intercepted estate, the Action of Walle is suspended; And if the first Tenant for life dies during the continuance of such intercepted estate, the Action is gone for ever. But, though, while there is an estate for life intercepted between the estate of the person-committing Walle, and that of the Reversioner or Remainderman in fee, the Remainder-man cannot bring his Action of Walle; yet, if the Walle be done by cutting down
WASTE II. 1. 2.

For, in the eye of the Law, a Remainder-man for life has not the property of the thing wasted: And even a Tenant for life in possession has not the absolute property of it, but merely a right to the enjoyment or benefit of it, as long as it is annexed to the inheritance, of which it is considered a part, and therefore belongs to the Owner of the Fee. 1 Inst. 218. 5. in m. refers to 1 Inst. 53: 5 Rep. 77. Page's Case; All. 81: 3 P. Wms. 307. 22 Fin. Abr. 523: 2 Eq. Abr. 727: 3 Abr. 757.

If Leesee for years commit Waste, and the years do expire, yet the Leesor shall have an Action of Waste for Treble Damages, though he cannot recover the place wasted; but if the Leesor accepteth of a Surrender of a Leaue after the Waste done, he shall not have his Action of Waste. It is said, that if a Tenant repairs before Action brought, he in Reversion cannot have an Action of Waste; but he cannot plead that he did no Waste, therefore he must plead the Special Matter. 1 Inst. 295, a. 285; 2 Inst. 306: 5 Rep. 119: 2 Cr. 678. By Inst. 11 H. 6, c. 5, where Tenants for life, or for another's life, or for years, grant over their estates, and take their profits to their own use, and commit Waste, they in Reversion may have an Action of Waste against them. 2 Inst. 302. Hein the Remainder, as well as the Reversioner, may bring this Action, and every Assignee of the first Leesee, mediate or immediate, is within this Act. 5 Rep. 77: 2 Inst. 302.

2. By the Feudal Law, Feuds being originally granted for life only, the rule was general for all Vassals or Feudatories; "si vasselius feudam dedit jure servat, et inigni detrimento deterrit servere," 1 Wright 44. See title Tenures. But in our ancient Common Law the rule was by no means so large; for not only he that was seized of an estate of inheritance might do as he pleased with it, but also Waste was not punishable in any Tenant, save only in three persons; Guardian in Chivalry, Tenant in Dower, and Tenant by the Curtsey; and not in Tenant for life or years. And it was even a doubt whether Waste was punishable, at the Common Law, in Tenant by the Curtsey. 2 Rect. 7: 2 Dov. Abr. title Waste: 2 Inst. 301.

The reason of this diversity was, that the estate of the three former was created by the Act of the Law itself, which therefore gave a remedy against them; but Tenant for life, or for years, came in by the demise and lease of the owner of the fee, and therefore he might have provided against the committing of Waste by his Leesee; and if he did not, it was his own default. 2 Inst. 219. But, in favour of the owners of the inheritance, the statutes of Marlborough, 52 H. 3, c. 23, (9. 24.) and of Glouchster, 6 Ed. 1. c. 5, provided that the waste of Waste shall not lie against Tenants by the Law of England, (or Curtsey,) and those in Dower, but against any Farmer or other that holds, in any manner, for life or years. So that, for above five hundred years past, all Tenants merely for life, or for any lets estate, have been punishable, or liable to be impeached for, Waste, both voluntary and permissive, unless their leaves be made, as sometimes they are, without Impeachment of Waste, 2 Inst. 219; and that is, with a provision or protection that no man shall impeach, or sue him, for Waste committed. But Tenant in tail, after possibility of issue extinct, is not impeachable for Waste, because his estate was at its creation an estate of inheritance, and so not within the statutes. Co. Lit. 27: 2 Roll. Abr. 26, 828.

Neither does an Action of Waste lie for the Debtor against Tenant by Statute, Recognizance, or Eject, because against them the Debtor may set off the damages in account. Co. Lit. 54. But it seems reasonable that it should lie for the Reversioner, expectant on the determination of the Debtor’s own estate, or of these estates derived from the Debtor. F. N. B. 58: 2 Comm. c. 18.

The Statute of Marlborough, 52 H. 3, c. 23, § 2, (or c. 24.) enacts, that “Farmers, during their terms, shall not make Waste, Sale, nor Exile, of Houses, Woods, and Men, nor of anything belonging to the Tenements that they have to farm, without special license had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convicted, they shall yield full damage, and shall be punished by amercement grievously.”

This act provides remedy for Waste done by Leesee for life, or Leesee for years, and it is the first statute that gave remedy in these cases. 2 Inst. 218. This statute is a penal law, and yet, because it is a remedial law, it has been interpreted by Equity. 10 Mod. 281.

Farmers.] Here Farmers do comprehend all such as held by lease for life or lives, or for years, by deed or without deed. 2 Inst. 219. It has been resolved, likewise, that it should extend to Strangers. 10 Mod. 281. Although the Register says, that what statute out of the Laws, is true: Yet the statute extends to Farmers for life only; but this act extended not to Tenant by the Curtsey, for he is not a Farmer; but if a lease be made for life or years, he’s a Farmer, though no rent be reserved. 1 Inst. 219.

Shall not make Waste.] By these words they are prohibited to suffer Waste, for it has been resolved that this act extends to Waste omitted, though the word is faciant, which literally imports against Waste. 10 Mod. 281.

Nor of any thing.] Houfes, Woods, and Men were before particularly named; and these words do comprehend Lands and Meadows, belonging to the Farm. 2 Inst. 218. Also these general words have a further signification; and therefore, if there had been a Farmer for life, or years, of a manor, and a Tenancy had echeated, this Tenancy so echeated did belong to the Tenement, that he held in farm, and therefore this extended to it; and the Leesor shall have a writ generally, and suppose a lease made of the lands echeated by the Leesor, and maintain it by the special matter. 1 Inst. 218.

Special Licence by Writing] This grant ought to be by deed, for all Waste tends to the disinheritance of the Leesor, and therefore no man can claim to be dispunishable of Waste without deed. 2 Inst. 219. Likewise, this Special Grant is intended to be abiqua impettione soft, without Impeachment of Waste. 2 Inst. 219.

Yield full Damage] And this must be understood with a prohibition of Waste upon this statute as lay against a 'tenant in Dower at the Common Law; and single damages were given by this statute against Leesee for life, and Leesor for years. 10 Mod. 281.

It has been said, that there are five Writs of Waste: two at the Common Law, as for Waste done by Tenant in Dower, or by Guardian; three by statute, as against Tenant for Life, Tenant for Years, and Tenant by the Curtsey.
WASTE II.

Curtsey. Tenant by the Curtsey, it is said, was punishable for Waife, by the Common Law, for that the Law created his estate as well as that of the Tenant in Dower, and therefore the Law gives free remedy against them. 1 In. 54, a. 2 In. 145, 209, 301, 302. But on this subject the authorities in the books are very contradictory, as the Reader will perceive by attending to the Note subjoined to the following clause of the Statute of Gloucester, 6 Ed. 1. c. 5, which enables, that, "A man from henceforth shall have a Writ of Waife in the Chancery against him that holdeth by the Law of England, or otherwise for term of life, or for term of years, or a Woman in Dower." No Action of Waife was before the Statute of Gloucester, but against Tenant in Dower and Guardian; and by the statute, Action of Waife is given against the Tenant by the Curtsey, Tenant for term of Life, and Tenant for term of Years. Br. Walf. pl. 88. Lord Coke says, a reason is required, (that is, as well the estate of the Tenant by the Curtsey, as the Tenant in Dower are created by Act in Law,) wherefore the prohibition of Waife did not lie as well against Tenant by the Curtsey as the Tenant in Dower at the Common Law; and the reason he assigns is, for that, by having the eate of the Tenant by the Curtsey is originally created, and yet after that he shall do homage alone in the life of the Wife, which proves a larger estate; and seeing that at the creation of his estate he might do Waife, the prohibition of Waife lay not against him after his Wife's decease; but, in the case of Tenant in Dower, the is punishable of Waife at the first creation of her estate. 2 In. 145. But see 2 In. 299, and the reasons there, as quoted above.

Shall have a Writ of Waife] Neither this Act, nor the Statute of Marlbridge, doth create new kind of Waifes, but gives new remedies for old Waifes; and what is Waife, and what is not, must be determined by the Common Law. 2 In. 300, 301.

Against him] If two are Joint-tenants for years or for life, and one of them does Waife, this is the Waife of them both as to the place waifed, notwithstanding the words of the Act are, him that holds. 2 In. 302.

Holt by the Law of England] Here Tenant by the Curtsey is named for two cases: 1st. For that albeit the common opinion was, that an Action of Waife did lie against him, yet some doubted of the same in respect to this word (tenant) in the writ, for that the Tenant by the Curtsey did not hold of the Heirs, but of the Lord Paramount; and after this Act, the Writ of Waife grounded thereupon doth recite this statute: 2dly, For that greater penalties were inflicted by this act than were at the Common Law. 2 In. 301.

Or otherwise for Term of Life or for Term of Years] A Leffe, for his own Life, or for another man's Life, is within the words and meaning of this Law, and in this point this Act introduces that which was not at the Common Law. 2 In. 301. If Feme Leffe for Life takes Husband, the Husband does Waife, the Wife dies, the Husband shall not be punished by this Law, for the words of this Act be (a man that holds, &c. for Life,) and the Husband hold not for Life, for he was ended but in right of his Wife, and the eate was in his Wife. 2 In. 301. He that hath an Estate for Life by Conveyance at Common Law, or by Limitation of Life, is a Tenant within the statute. 2 In. 302. Tenant for years of a moiety, 3d or 4th part are indivisibly, is within this act; and so it is of a Tenant by the Curtsey, or other Tenant for Life of a moiety, &c. 2 In. 302.

Or a Woman in Dower] This is to be understood of all the five kinds of Dower whereof Littleton speaks, viz. Dower at Common Law, Dower by the Custom, Dower ad testudinem ecclesiae, Dower ex affinju patriis, and Dower de la plus belle; and against all these the Action of Waife did lie at the Common Law. 2 In. 303. If Tenant in Dower be of a Manor, and a Copyholder thereof commits Waife, an Action of Waife lies against Tenant in Dower. 2 In. 303. Action of Waife lies against an Occupier for life, because he has the estate of the Leffe for life, and holds for life, as the statute mentions. 6 Rep. 57, b. If a Leffe for life be attainted of Treason, by which the lease is forfeited to the King, who grants it over to 1. s. and he afterwards does Waife, though he comes ex lege, yet Action of Waife lies against him. 2 Bald. 826. So, if a man disaffises the Tenant for life, and does Waife, yet Action of Waife lies against the Tenant for term of life; for he may have his remedy over against the Disaffiser. Br. Walf. pl. 38. Likewise, if an estate be made to A. and his heirs, during the life of B., A. dies, the heir of A. shall be punished in an Action of Waife. 1 In. 54, a.

A Tenant for life, without Impeachment of Waife, has as full power of cutting down Timber, and of opening new Mines for his own use, as if he had an Estate of Inheritance; and is in the same manner entitled to the Timber, if severed by others. 1 Term. Rep. 56: 1 In. 220, a. But although such Tenant for life may commit Waife for his own benefit, yet he may be restrained by an injunction out of the Court of Chancery, from making Spoil and Destruction on the Estate; this distinction was first introduced in the case of Lord Barnard, as to Ruby Castle. See p. 394.

Though it is said, that an Action of Waife does not lie against Tenant by Statute-Merchant, Elegit, or Staple, because it is not an estate for life or years, and the statute mentions those who hold in any manner for life or years; yet, contra, Fitzh. Nat. 58 H. and there said, that in the Register is a writ against him. 6 Rep. 37. Some books give the reason of it to be, because the Conqueror, if he commits Waife, may have a virem facias ad comparandum, and the Waife shall be recovered in the debt. Fitzh. N. B. 58, b. See 1 In. 57, b. in notes. If a man makes a lease for years, and puts out the Leffe, and makes a lease for life, and the Leffe for years enters upon the Leffe for life, and does Waife; the Leffe for life shall not be punished for it. 2 In. 303. If Leffe for years makes a lease of one moiety to A. and of the other moiety to B., and A. does Waife; the Action shall be against both; for the Waife of the one is the Waife of the other. Brevard, 58.

An Action of Waife lies against a Devisee, and the writ may suppose it ex legatione, for it is within the equity of the statute. Br. Walf. pl. 32. If an Estate of Land be to a Devisee to Baron and Walf. and to them during the coverture, &c. if they waife, the Devisee shall have Writ of Waife against them. Lit. 6, 32. If Feme Leffe for life marries, and the Husband does Waife, Action lies against him. And if, in the above case, the Husband dies, Action of Waife lies against the Feme for the Waife he committed. But if Tenant in Dower marries, and the Husband does Waife, and dies, the Feme shall not be punished for it. Lakewife, if Baron and Feme are
are Leases for life, and Baron does Waffe, and dies, the Feme shall be panished in Waffe, if she agrees to the estate. 2 Rell. Abr. 827; 1 Inst. 55; Ac. 113. But if she waives the estate, the shall not be charged. So, upon lease for years made to the Baron and Feme, Waffe lies against both. And if Baron and Feme are joint Leases for years, and Baron does Waffe, and dies, Action of Waffe lies for this against the Feme. Upon lease for life, to Baron and Feme, Waffe lies against both. Likewise, if Feme commits Waffe, and then marries, the Action shall be brought against both. 2 Rell. Abr. 827. And the writ may be Quod sentinent augunt, or Quod non, dum sola fuit, ficta: augunt. Bro. Waffe, pl. 55.

If Baron seised for life of his Wife, in right of his Wife, does Waffe, and after the Feme dies, no Action of Waffe lies against the Baron in the tenure, because he was seised only in right of his Wife, and the frank-tenement was in the Feme. 1 Inst. 154; 5 Rep. 75, 6. But if the Baron, poissied for years in right of the Feme, does Waffe, and after the Feme dies, Action of Waffe lies against the Baron, because the Law gives the term to him. 1 Inst. 54. See Gasb. 4. 5, pl. 6; Ow. 49.

Few cases, if any, can now happen of Waffe or injury done to Premises, the Landlord, or person who has the inheritance, or even he who has a longer term in the Premises, or who is himself liable to answer over, may maintain an Action on the Cape in Nature of an Action of Waffe, against the person committing the Injury, for Damages. See prl. III. IV.

III. The Punishment for Waffe committed, was, by Common Law and the Statute of Marlbridge, only single damages; except in the case of a Guardian, who also forfeited his Wardship by the provisions of the great Charter. 2 Inst. 145, 202: Stat. 9 Hen. 3, c. 4. But the Statute of Gloucerct refers, that the others four species of Tenants for Life, for Years, by Curtesy, or by Dower shall lose, and forfeit the place wherein the Waffe is committed, and also treble damages, to him that hath the Inheritance. The expresss of the statute is, 'he shall forfeit the thing which he hath walled,' and it hath been determined, that under these words the place is also included. 2 Inst. 304. And if Waffe be done in a Room, or here and there, all over a Wood, the whole Wood shall be recovered; or, if in several Rooms of a House, the whole House shall be forfeited; because it is impracticable for the Reveresner to enjoy only the identical places walled, when lying interpersed with the other. Co. Lit. 54. But if Waffe be done only in one end of a Wood, (or perhaps in one Room of a House, if that can be conveniently separated from the rest,) that part only is the locus conflat, or thing walled, and that only shall be forfeited to the Reveresner. 2 Inst. 304; 2 Comm. c. 18.

The Redress for this injury of Waffe is of two kinds; Preventive and Corrective: the former of which is by Writ of Experation, the latter by that of Waffe.

Experation is an old French word, signifying the same as Waffe, or Extirpation: and the Writ of Experation lay at the Common Law, after Judgment obtained in an Action real, and before that punishment was delivered by the Sheriff, to stop any Waffe which the vanquished party might be tempted to commit in Lands, which were determined to be no longer his. 2 Inst. 328. But in some cases the Demandant may be rightly ap-

prehenfive, that the Tenant may make Waffe or Experation pending the suit, well knowing the weakness of his title, therefore the statute of Gloucerct, 6 Edw. 1, c. 13, gave another writ of Experation, pending plotts, commanding the Sheriff firmly to inhibit the Tenant "in facias augunt, et per oportuetum pendens placeat," itidem indiscrpta." Regis. 27. And, by virtue of either of these writs, the Sheriff may reft them that do, or offer to do, Waffe; and, if otherwife he cannot prevent them, he may lawfully imprison the Waffers, or make a warrant to others to imprison them; Or, if necessity require, he may take the poffe domitum to bis altesse. So odious in the light of the Law is Waffe and Defraution. 2 Inst. 304; 2 Comm. c. 14. See further, this Dict. title Experation.

A Writ of Waffe is also an Action, partly founded upon the Common Law, and partly upon the Statute of Gloucerct, c. 5; and may be brought by him who hath the immediate estate of inheritance in reversion or remainder, against the Tenant for Life, Tenant in Dower, Tenant by the Curtesy, or Tenant for Years. This Action is also maintainable, in pursuance of Statute 15 Edw. 2, (15 & 16. 1, c. 22,) by one Tenant in Common of the Inheritance against another, who makes Waffe in the estate held in common. The equity of which Nature extends to joint-tenants, but not to Coparceners: Because, by the old Law, Coparceners might make partition, whenever either of them thought proper, and thereby prevent future Wasses; but Tenants in Common and joint-tenants could not; and therefore the statute gave them this remedy, compelling the defendant either to make partition, and take the place walling to his own share, or to give securitv not to commit any farther Wasse. 2 Inst. 403, 404. But these Tenants in Common and Joint-tenants are not liable to the penalties of the statute of Gloucerct, which extends only to such as have Life-estates, and do Waffe to the prejudice of the Inheritance. The Waffe however must be something considerable; for if it amount only to twelve pence, or some such petty sum, the plaintiff shall not recover in an Action of Waffe: nam de minimis non curat lex. Finch. L. 29; 3 Comm. c. 14.

This Action of Waffe is a mixed action; partly real, so far as it recovers Land, and partly personal, so far as it recovers Damages: For it is brought for both those purposes; and, if the Waffe be proved, the plaintiff shall recover the thing or place walled, and also treble damages, by the Statute of Gloucerct. The Write of Waffe calls upon the Tenant to appear and shew cause, why he hath committed Waffe and Defraution in the place named, ad exhereditationem, to the dishonour, of the plaintiff. F. N. B. 55. And if the defendant makes default, or does not appear at the day assigned him, then the Sheriff is to take with him a Jury of twelve men, and, go in person to the place alleged to be wasted, and there inquire of the Waffe done, and the Damages; and make a return or report of the same to the Court, upon which report the judgment is founded. Pap. 24. For the Law will not suffer so heavy a judgment, as the forfeiture and treble damages, to be puffed upon a mere default, without full assurance that the fact is according as it is stated in the writ. But if the defendant appears to the writ, and afterwards suffers judgment to go against him by default, or upon a null a ducat, (when he makes no answer, puts in no plea, in defence,) this amounts to a confession.
confession of the Waife; since, having once appeared, he cannot now pretend ignorance of the charge. Now therefore the Sheriff shall not go to the place to inquire of the fact, whether any Waife has, or has not, been committed; for this is already ascertained by the plain confession of the defendant: but he shall only, as in defaults upon other actions, make inquiry of the quantum of damages. Cro. Eliz. 18, 250. The defendant, on the trial, may give in evidence any thing that proves there was no Waife committed, as that the destruction happened by lightning, tempest, the King's enemies, or other inevitable accident. Co. Litt. 55. But it is no defence to say, that a stranger did the Waife, for against him the plaintiff hath no remedy: though the defendant is entitled to sue such stranger in an Action of Trespass, &c. and shall recover the damages he has suffered in consequence of such unlawful act. Bull. N. P. 112.

When the Waife and Damages are thus ascertained, either by confession, verdict, or inquiry of the Sheriff, judgment is given, in pursuance of the statute of Gloucester, c. 5, that the plaintiff shall recover the place wasted; for which he has immediately a Writ of Seifie, provided the particular estate be still unfilled: (for, if it be expired, there can be no forfeiture of the land;) and also that the plaintiff shall recover treble the damages affixed by the Jury; which he must obtain in the same manner as all other damages, in actions personal and mixed, are obtained, whether the particular estate be expired, or still in being. 3 Cowen. c. 14.

The Proceeds in Action of Waife, is first a Writ of Summons made by the Curator of the county where the land lies, and on the return of this writ the defendant may appear, and the plaintiff adjourn, &c. Then a plea is to be made out by the Pilayer of the county, on the return of which a demurrer nifies the defendant to appear, and upon his appearing the plaintiff declares, and the defendant pleads, &c. By Pl. & & 8 W. 3, c. 11, § 3, a plaintiff shall have costs in all actions of Waife, where the damages found do not exceed twenty nobles; which he could not by the Common Law.

A common Writ of Waife is of this form: GEORGE the Third, &c. To the Sheriff of S., greet: &c. If A. B. shall cut down trees, &c. then summons by good fummans &c. that he be before the Judge, &c. &c. &c. and shall, upon his application, make the declaration, and the defendant pleads, &c. By 8 W. 3, c. 11, § 1, a plaintiff shall have costs in all actions of Waife, where the damages found do not exceed twenty nobles; which he could not by the Common Law.

IV. Besides the preventive reliefs at Common Law, the Courts of Equity, upon Bill exhibited therein, complaining of Waife and Destruction, will grant an injunction, in order to stay Waife, until the defendant shall have put in his answer, and the Court shall thereupon make further order; which is now the most usual way of preventing Waife. 3 Cowen. c. 14.

If a Tenant for Life plants Wood on the land, which is of so poisonous a quality that it destroys the principles of vegetation, without an express power in his lease, where it is usual to have such powers, it may be considered as Waife, and the Court of Chancery may grant an injunction. 5 New Ab. 491: MSS. Rep. Marquis of Powis v. Durrill, Canc.

If there be Leafe for Life, and the Leafee for life, the reversion or remainder in fee, and the Leafee in Possession, waste the lands, though he is not punishable for Waife by the Common Law, by reason of the mean remainder for life; yet he shall be required in Chancery, for this is a particular mischief. Mer. 552. 1 Fern. 21.

But if such Leafee has in his lease an express clause of unlawful Impeachment of Waife, he shall not be injured in Equity. 1 Fern. 23.

If A. is Tenant for Life, remainder to B. for Life, remainder to C. and other Sons of B. in Tail Male, remainder to B. in Tail, &c. and B. (before the birth of any son) brings a Bill against A. to stay Waife; and A. demurs to this Bill, because the Plaintiff had no right to the Trees, and no one that had the inheritance was party: Yet the Demurer will be overruled, because Waife is to the damage of the Public, and B. is to take care of the inheritance for his Children, if he has any, and has a particular interest himself, in case he comes to the estate. 3 Eq. Abr. 400.

It seems to be a general principle, that Tenant in Tail after possession, shall be required in Equity from doing Waife, by injunction, &c. because the Court will not see a man dispossess'd, for Chan. Princ. And he took a diversity, where a man is not punishable for Waife, and where he hath a right to do Waife; and cited Uvedale's Case, (24 Car. 1,) ruled by Lord Rolle, to warrant that distinction. 2 Shaw. 69, p. 53.

A. devised lands, on which Timber was growing, to his Wife for Life, remainder to B. in Fee, paying several legacies within a limited time; and in default of payment, the remainder to C., he paying the legacies: And on a Bill brought by B., the Court gave him leave to cut Timber for the payment of the legacies, though it was opposed by the Tenant for Life and the Devisee over, he making satisfaction to the Widow for breaking the ground by Carriage, &c. &c. 2 Fern. 152, and fee ib. 218.

A Leafe without Impeachment of Waife, takes off all restraint from the Tenant of doing it; and he may, in such case, pull up or cut down Wood or Timber, or dig Mines, &c. at his pleasure, and not be liable to any Action. 1 Esp. 135. But though the Tenant may let the houses be out of repair, and cut down Trees and convert them to his own use; yet where a Tenant in Fee-imple made a Leafe for Years without Impeachment of Waife, it was adjudged that the Lessor had still such property, that he cut and carried away the Trees, the Leesee could only recover damages in Action for the Trespass, and not for the Trees; Also it had been held, that Tenant for Life without Impeachment of Waife, if he cuts down Trees, it is only exempt from an Action of Waife, &c. 1 Rep. 83, 11 Inf. 210: 2 Inf. 493. 6 Rep. 53, 1 Esp. 184. And if the words are to be held without Impeachment of Waife, or any Writ or Action of Waife, &c. the Lessor may seize the Trees if the Leesee cuts them down, or bring Trespass for them. Wood's Inj. 574. See ante II.

In many cases, likewise, the Court of Chancery will restrain Waife, though the Lease, &c. be made without
Waste IV.

Impeachment of Waste: For the clause of "without Impeachment of Waste" never was extended to allow the defection of the estate itself, but only to excuse for permitting Waste; and therefore such a clause would not give leave to fell or cut down Trees ornamental or sheltering of a House, or a lease or demesne a House itself. See 5 New Abr. 495; MSS. Rep. in Chas. 1744; Packington v. Packington; and 2 Freem. 53, Abraham v. Bubb. So where A., on the marriage of his eldest Son, in consideration of 10,000 l. portion, settled (inter alia) Raby Castle on himself for life, without Impeachment of Waste, remainder on his Son for life, and to his first and other Sons in Tail Male: Afterwards, having taken some displeasure at his Son, he got 200 workmen together, and of a sudden stripped the Castle of the lead, iron, glass, doors, and boards, &c. to the value of 3000 l. The Court, on the Son's filing his Bill, granted an Injunction to stay committing Waste in pulling down the Castle; and, upon hearing the cause, not only the Injunction to continue, but that the Castle should be repaired, and put in the same condition it was in; and, for that purpose, a Commission was to issue to ascertain what ought to be repaired; and a Master to see it done at the charge and expense of the Father, and the Son to have his costs. 2 Vern. 738, 739. 1 Salk. 161. Fane v. Lud. Barnard. Vide 1 P. Wms. 527.

A Bill was brought to restrain Tenant in Dower from getting Peat; Lord Chancellor dismissed it with costs, as it appeared to be vexatious; the Peat the fold not being above the value of 10 d. But herein it was said, that digging Peat is in many places the ordinary Bate, and perhaps the only fruit that can rise from the land. They do not carry away the Soil, for they dig off the Turf, then take away the Peat, and lay the Turf down again: And the Tenant for Life can no more dig Peat to fell, than cut down Timber to fell. And the Chancellor said, if he was to give any relief, he must direct an Issue; but that the cause was of too frivolous a nature to maintain the expense. 5 New Abr. 496; MSS. Rep. Wilton v. Bregg. 1742. Vide 2 Vern. 392.

A Tenant for Life, remainder to Trustees to preserve, &c. remainder to D. the plaintiff in Tail, remainder over, with power to A. with consent of trustees, to fell Timber, and the money arising to be vested in lands, &c. to the same uses, &c. A. fell Timber to the value of 5000 l. without consent of Trustees, who never interceded; and A. had suffered some of the houses to go out of repair, D. by Bill prayed an Account and Injunction. The Master of the Rolls said, that the Timber might be considered under two denominations, to wit, such as was thriving and not fit to be felled; and such as was unthiving, and what prudent man and good husband would fell, &c. and ordered the Master to take an account, &c. And the value of the former, which was Waste, and therefore belonged to the plaintiff, the next in remainder of the inheritance, was to go to the plaintiff; and the value of the other was to be laid out according to the feuement, &c.; but as to repairs, the Court never interposes in case of permissive Waste, either to prohibit or give satisfaction, as it does in case of willful Waste: And where the Court hath jurisdiction of the principal, with the prohibiting, it does in consequence give relief for Waste done, either by way of account, as for Timber felled; or by obliging the party to rebuild, &c. as in case of Hovels, &c.; and mentioned Ed. Barnard's Cafe above. But as to repairs, it was objected, that the plaintiff here had no remedy at Law, by reason of the demesne Estate for Life to the Trustees, between Plaintiff's remainder in Tail and the Defendant's estate for Life; and that therefore Equity ought to interfere, &c. and that it was a point of consequence. See note a, supra. 5 New Abr. 496; MSS. Rep. Mich. Vet. 1733, Coflman v. Lord Gower.

A Lord of a Manor may bring a Bill for an account of Ore dug, or Timber cut, by the Defendant's Tenant. Thus, a customary Tenant of Lands, in which was a Copper Mine that never had been opened, opened the same, and dug out and sold great quantities of Ore, and died; and his Heir continued digging and disposing of great quantities out of the same Mine. The Lord of the Manor brought a Bill in Equity against the Executor and Heir, praying an account of the said Ore; and alleged that these Customary Tenants were as Copyhold Tenants; and that the freehold was in the Plaintiff as Lord of the Manor and Owner of the soil; and that the manner of pulling the precipices was by forredering into the hands of the Lord, to the use of the Surrender. It was insisted for the Defendants, that it did not appear that the admittance in this case was to hold ad voluntatem Domini secundum confuetudinem, &c. without which words, it was inferred, that there could be no Copyhold, as had been adjudged in Lord Ch. Jus. Holl's time. And Lord Ch. Cooper said, it would be a reproach to Equity to say, that where a man has taken another's property, as Ore or Timber, and disposed of it in his lifetime, and died, there should be no remedy. 1 P. Wms. 406, pl. 112. Bishop of Winchester v. Knight. Vide Fin. Rep. 155; Wild v. Sir Edw. Stratting. 2 Vern. 251, pl. 247.

Where Tenants of a Manor, claiming a right of Erovers, cut down a great quantity of growing Timber of great value, their title being doubtful, the Court of Chancery entertained a Bill, at the suit of the Lord of the Manor, to restrain this aStarting of it. Steere v. Strange; and v. Whiting; Can. Mich. 1679, Hol. 1768; Mispr. Treat. 123, 124.

One feated in Fee of Lands in which there were Mines, all of them unopened, by a deed conveyed thereon, and all Mines, Waters, Trees, &c. to Trustees and their Heirs, to the use of the Grantor for Life, (who soon after died,) remainder to the use of A. for Life; remainder to his first, &c. Son in Tail Male successively, remainder to B. for Life, remainder to his heir, &c. Son in Tail Male successively, remainder to his two Sisters C. and D. and the Heirs of their Bodies, remainder to the Grantor in Fee. A. and B. had no Sons; and C. one of the Sislers, died without issue; by which the Heir of the Grantor, as to one moiety of the premises, had the first estate of inheritance. A. having cut down Timber and sold it, and threatened to open the Mines, the Heir of the Grantor, being feated of one moiety, as supra, by the death of one of the Sislers without issue, brought his Bill for an account of the moiety of the Timber, and to stay A.'s opening of any Mine. And it was adjudged, the right of this Timber belongs to those who, at the time of its being fevered from the feafold, were feated of the first estate of inheritance, and the property becomes vested in them. 2 P. Wms. 240. A Bill
WASTE.

A Bill was brought against the Executors of a Joint-rent, to have a satisfaction out of affets for permutive Waste upon the Joynour of the Teffattix, &c. But by Convener, the Bill must be dismissed, for there is no covenant that the Joint-rent shall keep thejoynour in good repair; and in the common case, without some particular circumstances, there is no remedy in Law or Equity for permutive Waste, after the death of the particular tenant. *Win. Abr. t. ii. Waste, p. 523. cites M58.

Rep. 1 Gard. 1. in Case, Torrey v. BUCK.

It has been said in Equity, that Remainder-man for Life shall, in Waste, recover damages in proportion to the wrong done to the inheritance, and not in proportion only to his own estate for life. 1 Vern. 158.

A. being Tenant for ninety-nine years, if he should so long live, with Trustees to preserve remainder to his first and other Sons in Tail, and to remain to B. in Tail; A. and B., before issue born of A., fell Timber. The eldest Son of A. afterwards brings his Bill, for an account and satisfaction of the Timber against B. *Per Lord Chan.: The plaintiff has no remedy at Law, either in his own name, or in the name of his Trustees. A. if he had not contented to it, should have brought Trespass; for Tenant for years is considered as a fiduciary for Remainder-man, or his Lessees. If A. had an estate for life, and no limitation to Trustees, the plaintiff could have had no remedy; because Tenant for Life might have barred, or surrendered the whole estate to the Remainder-man. But here the freehold was in the Trustees; and the possession of Lease for years is in Law the possession of the Owner of the freehold. The Trustees however could not here have maintained Waste, because the Common Law gave no Action of Waste but to the Owner of the inheritance; and the statute of Gloucester gives the Writ to the same person; but the Trustees are in no other condition than Remainder-man for Life. Trustees may bring a Bill in Equity to stay Waste, before the contingent remainder comes in effect. If the Trustees had brought such a Bill, the Court, as to Trees actually cut, would have obliged them to have made satisfaction in money, to have been secured to attend the contingent ules. Where there is Tenant for life or years, subject to Waste, and Timber is blown down, the Owner of the first Remainder in Tail vedet, shall have it; for the Common Law considers an estate in contingency as no estate; and when the Tree is lowered, the property falls in somebody. If there be Tenant for Life, remainder for Life, remainder in Fee, Remainder-man can have no Action for Waste, because the plaintiff must recover the place wathd, which would be injustice to the remainder over; but such a Remainder-man of the inheritance after the intervening estate, may have Trower for the Trees; and if Remainder-man for Life dies in the Life of Remainder-man in Fee, he may bring Waste.

—Though an Injurious is a proper remedy, yet it has never been determined that a Bill for an Account cannot be maintained afterwards: And though a Recovery was suffered after Waste done, it was the use of plaintiff and his Heirs, which is no new use, and ought not to bar Waste in Equity. It is true, Action of Waste dies with the person; but though Waste will not lie at Law, as the person committing it is dead, yet he may have relief in this Court. It has been held in all cases of Fraud, the remedy never dies with the person, but relief may be had against the executor out of affets; and this Court will follow the affets of the party liable to the demand: and Collusion in this Court is the same as Fraud. Decreed, a satisfaction to be made to the plaintiff for the value of the Timber, as he is now Tenant in Fee of the estate; but without interest, as that would be carrying it too far. 5 New Abr. 499: *Gatb v. Cason.

WASTE-BOWL, from the Sax. Waf-head, i.e. Health be to you. A large Silver Cup or Bowl, wherein the Saxons, at their entertainments, drank a Health to one another, in the phrase of Waste-head. This Waftel or Waste-head Bowl, was set at the upper end of the table in religious houses for the use of the Abbot, who began the Health or peculium charitatis to strangers, or to his freemen. Hence cakes and fine white bread, which were usually stoped in the Wastel-bowl, were called Wastel-Bread. *Mar Paris 141.

WASTORS, Thieves so called; mentioned among robbers, draw latches, &c. in *Pl. est. 4 H. 4. c. 27.

WATCH; To Watch is to stand sentry, or attend as a guard; &c. Watching is properly for the apprehending of rogues in the night, as Warding is for the day; and for default of Watch and Ward the Township may be punished. Our ancient statutes direct, that in all Towns, &c. between the day of Christmas and Michaelmas-day, Night-Watches are to be be kept, in every City, with six men at every gate; and fix or four in Towns; and every borough shall have twelve men to watch, or according to the number of the inhabitants of the place, from further to sun-rising; who are to arrest strangers suspected, and may make use and cry after them, and justify the detaining them until the morning; and Watches shall be kept on the Sea-coasts, as they have been wont to be. *Stats. 1 Ed. 1. b. 2. c. 4. 5 Htn. 4. c. 3.

Every Justice of the Peace may cause the Night-Watches to be duly kept; which is to be composed of men of able bodies, and sufficiently weaponed: And none but inhabitants in the same town are compellable to watch, who are bound to keep it in turn; or to find other sufficient persons for them; or, on refusal, are indictable; &c. *Ctx. Libr. 70: *Gro. Eliz. 204. See further, title Police.

WATCHES, Made by artificers, are to have the masters' names, &c. under the penalty of 20l. Stat. 3 & W. 3. c. 28.

WATER-BAILIFF, An officer in Port Towns, for the searching of Ships. In the city of London, there is a Water-Bailiff, who hath the supervising and search of Ships brought thither; and the gathering of the Toll arising from the Thames: He attends on the Lord Mayor, having the principal care of marshalling the galleys at his table; and arrests men for debt, or other personal or criminal matters, upon the River of Thames. *See Joh. 18 H. 6. c. 5.

WATER COURSE. A Water-course does not begin by prescription, for yet by assent, but begins ex jure nature, having taken this Course naturally, and cannot be diverted. 3 Aylt. 340.

Action on the Cale lies for diverting a Water-cours to my prejudice. See Action on the Cale, and eat. 32: *Skin. 310, 350. 5 Mad. 206: 22 *P. Abr. 525, 528.

WATER-GAGE. A sea wall or bank, to restrain the current and overflowing of the Water. It signifies also...
also an instrument to gauge or measure the quantity or
deepness of any Waters.

**Water-Gang, Watergangium.** A Saxon word for a
trench or course to carry a stream of Water; such
are commonly made to drain Water out of marshes.

**Ordin. Mar. de Rom. Chart. H. 3.**

**Water-Gavel, A rent paid for filling in, or
other benefit received from, some river. Chart. 15 H. 2.**

**Water-Measure, Is greater than Winchester Measure,
and used for selling of Coals in the Pool; &c., mentioned
in the stat. 23 Car. 2. c. 11.**

**Watermen.** The Lord Mayor and Court of Al-
dermen, in London, have a great power in the Govern-
ment of the Company of Watermen, and appointing
the rates for plying on the Thames, and the justices of
Peace for Middlesex, and other adjoining counties, have
likewise authority to hear and determine offenses, &c.
Watermen's names are to be registered; and their boats
be twelve feet and a half long, and four feet and a half
broad, or liable to forfeiture. Also none shall ply on
the River, but such as have been apprentices to Water-
men for seven years, &c., stat. 2 & 3 P. & M. c. 15.
The Lightermen on the Thames, and Watermen, are
made a Company: The Lord Mayor and Aldermen are
yearly to elect eight of the best Watermen, and three
of the best Lightermen, to be Overseers and Rulers;
and the Watermen to choose Affiliates at the principal
Stairs, for preferring good government; and the Rulers
and Affiliates may make rules to be observed under
penalties, &c. The Rules, on their Court-days, shall
appoint forty Watermen to ply on Sunday, for carrying
passengers across the River; and pay them for their la-
bour, and apply the overplus of the money to the poor-
decayed Watermen: Where persons travel on a Sunday
with boats, they are to be licensed and allowed by a
No person working any wherry-boats, or barges, on the
River Thames, shall take an apprentice or servant, but
five Watermen as housekeepers, &c., on pain of
1sl. And no apprentice shall take upon him the care of
any boat, till he is fifteen years of age; if a Waterman's
fence and thirteen, if a Landman's; unless he hath
worked with some able Waterman for two years, under
the penalty of 10l. If any person, not having served
seven years to a Waterman, &c., row any boat on the
same river for hire, he shall forfeit 10l. But Gardener's
boats, Dung-boats, Wood-lighters, Fishermen, Water-
barges, &c., are excepted. The penalties to be levied by
difcreet; for want of which the Lord Mayor, or a Justice of
Peace may commit the offenders to the House of Correction
for any time not exceeding a month, nor less than fou-
teen days, &c., Stat. 2 Geo. 2. c. 26. Watermen using
boats, &c., upon the Thames, are not to take any appren-
tice under 14 years old, who shall be bound for seven
years, and enrolled in the book of the Waterman's Com-
pany, on pain of 10l. No more than two apprentices to
be taken at one time; when the first hath served four
years, under the like penalty. No Tilt-boat, Row-
barge, &c., shall take in above thirty-seven passengers,
and three more by the way: nor any other boat above
eight passengers, and two by the way, on forfeiture of
5l. for the first offence, and 10l. for the second, &c.
And in case any person be drowned, where a greater
number is taken in, the Watermen to be guilty of Felony,
and transported: Also Tilt-boats, used between London-
Bridge and Gravesend, shall be 15 tons, and not under,
and the other boats 3 tons. Rulers of the Company of Wat-
ermen are to appoint two Officers, one at Billingsgate at
high water, and another at Gravesend, to ring a bell for
the Tilt-boats, &c., to put off; and they not immedi-
ately proceeding in their voyage, with two sufficient men,
shall forfeit 5l. leviable on their boats, tackle, &c., see.
See to stat. 54 Geo. 3. c. 65, for further regulating Wa-
termen, this Dictionary, title Police.

**WATER-ORDINAL.** See Ordinal.

**WATERSCAPE, from the Sax. Water, Agua, &
Schaub, schaft.] An Aqueduct, or passage for Water.

**WATLING- STREET, is one of those four ways
whereby the Romans are said to have made in this king-

dom, and called them Conduitts, Precitoris, Militari-

s, &c., Publicitas. This Street is otherwise called Watling-

Street. See R. Hov. f. 228, a. u. 10. This Street leads
from Dover to London, St. Albans, Dunstable, Taverne-

ford, and the Severn, near the Wrekin, in Shropshire,

extending itself to Anglefs in Wales. Amo 39 Ed. c. 2.

The Second is called Abingdon-Street, so called ab bene,
stretching from Southampoton over the River Isis, at New-

bridge; thence by Camden and Littlechift; then it passes
the River Doronert by Derby, so to Belfower Castle, and
ends at Tynmouth.

The Third was called The Fege, because in some places
it was never perfected, but lies as a large Ditch; or, as
Cruell says, from having a Ditch on one fide of it: This
way led from Cornwall through Devonshire, by Tittary,

near Sow in the Wolfs, and besides Country to Lextra-

and so to Lincoln.

The Fourth was called Ermine or Erningame Street, be-

ginning at St. David's in Weft Wales, and going to
Southampton. See the Laws of Edward the Confessor,

whereby their four public ways had the privilege of Pa
Regis. See Hollingford's Chron. vol. 1. 109. 19; and Henry
of Huntingdon, lib. 1. in princip. And in Leg. Will. 1.
6. 50, there are three ways mentioned; but Theild-

Street is omitted: See also an old Description of these
ways, made by Robert of Gloucester, Doug. Antqo. of
Wurn, p. 5; Cruell.

**WAVESON, Such Goods as after Shipwreck do ap-
pear swimming upon the Waves. Chart. 18 Hen. 8. See
titles Flattem; Wreck.

**WAX-CHANDLERS;** See title Candle.

**WAXSCOT, Cramium.] A Duty anciently paid, twice
a year, towards the charge of Wax Candles in Churches.

**Spelman.**

**WAY, [W. a.] A Passage, Street, or Read. Litt.
Away, or the Right of going over another man's Ground,
is clifled by Blackstone among Incoporeal Heredita-

ments. In such private Ways, a particular Man may have an
Interest and a Right, though another be the Owner of the
Soll. 2 Camp. c. 3.

This may be grounded on a special Permission; as
when the Owner of the Land grants to another a Liberty
of passing over his grounds, to go to Church, to Market,

or the like; in which case the Gift or Grant is particu-
lar, and confined to the Grantee alone; it dies with the

Owner; and if the Grantee leaves the country, he can-
not assign his Right to any other; nor can he justify

taking another person in his right. Finch. L. 31. A
Way may be also by Prescription; as all the inhabitants-
of such a hamlet, or all the owners and occupiers of such a farm, have immemorially used to cross such a ground, for such a particular purpose; for this immemorial usage supposes an original grant, whereby a Right of Way, this appurtenant to land or houses may clearly be created. A Right of Way may also arise by act and operation of Law; for, if a man grants me a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives me a Way to come at it; and I may cross his land for that purpose without trespass. Finch. L. 61. For when the Law does give any thing to one, it gives impliedly whatsoever is necessary for enjoying the same. T. 125. 126.

Where a man has a Way to his Close, he cannot go further without a Preemption, but it is held if he go to a Mill or Bridge, it may be otherwise. 1 La. Raym. 75.

If a man has a Right of Way over another's land, and the Way becomes impassable by the overflowing of a river, he cannot justify going over the adjoining land, unless the Owner of the land is bound, by Preemption, or in his own Grant, to repair the Way. But if public Highways are foundous, passengers are justified, from principles of convenience and necessity, in turning out upon the land next the road. Taylor v. Woodbridge. Digest. 716.

Disturbance of Ways is very familiar in its nature to Disturbance of Common. See title Common. It principally happening when a person, who hath a Right to a Way over another's ground, by Grant or Preemption, is obstructed by inclosures, or other obstacles, or by ploughing across it; by which means he cannot enjoy his Right of Way, or at least not in so commodious a manner as he might have done. If this be a Way annexed to his estate, and the obstruction is made by the tenant of the land, this brings it to another species of injury; for it is then a Nuisance, for which an Asile will be. See title Nuisance. But if the Right of Way, thus obstructed by the tenant, be only in grofs, (that is, annexed to a man's person, and unconnected with any lands and tenements,) or if the obstruction of a Way belonging to a house or land is made by a stranger, it is then in either case merely a Disturbance: for the obstruction of a Way in grofs is no detriment to any lands or tenements, and therefore does not amount to the legal notion of a Nuisance, which must be laid ad mensuram instar temporum: and the obstruction of it by a stranger can never tend to put the Right of Way in dispute; the remedy therefore for thse Disturbances is not by Asile or any real action, but by the universal remedy, of Action on the Title to recover damages. 3 Com. c. 16. Hale on F. N. B. 183; Litt. 311. 319.

WAYS AND MEANS, Committees; See title Taxes.

WEALD, or WALD, In the beginning of names of places, signifies a situation near a wood, from the Sax. Weald, i.e. a Wood. The woody parts of the counties of Kent and Sussex, are called the Weald; though misprinted Wilder in the statute 13 & 14 Car. 3. c. 6.


WEM, A great dam made across a river, accommodated for the taking of fish, or to convey a stream to a mill. All Wears, for the taking of fish, are to be put down, except on the sea coasts, by Magna Carta, c. 23. and Hot. 25 Ed. 3. f. 41. & 4. Commissions shall be granted to Justices, to keep the Waters, survey Weals and Mills, and to inquire of and correct abusers; and where it is found by them that any new Weals are made, or others altered, to the nuisance of the Public, the Sheriff, by jure factum, is to enjoin the person making them notice of it; and if he do not amend the same in three months, he shall forfeit 100 marks, &c. Stats. 1 H. 4. c. 12. 4 H. 4. c. 11; 12 Ed. 4. c. 7.

WEAVERS. Permons using the trade of a Weaver, shall not keep a cucking or fulling-mill, or we dyeing, &c. Or have above two looms in a house, in any Corporation or Market-town, on pain of forfeiting 20s. a week; And shall serve an apprenticeship of seven years to a Weaver or Clothier, or shall forfeit 20l. &c. Stats. 2 & 3 P. & M. c. 11. By Stat. 13 Geo. 3. c. 68, the wages of journeymen Weavers in London are to be settled by the Lord Mayor, Recorder, and Aldermen. Matters giving more wages than so appointed, to forfeit 20l., and journeymen demanding, or combining to demand more, to forfeit 40l. or be imprisoned for three months.

WEED, Sax. A covenant or agreement; whence to weed a wedded husband, wedded bond-serv. Cowell.

WEBEDRIP, The customary service which certain tenants paid to their Lord to cutting down their corn, or doing other harvest duties. From the Sax. Wed, (wet) and Ridere to pray or desire, and Rippen to reap or mow. As a Covenant of the Tenant to reap for the Lord at the time of his bidding or commanding. Parv. Antiq. 401; Cowell.

WEEK, Septimana. Seven Days of Time; four of which Weeks make a Lunar Month, &c. The Week was said to be originally divided into seven Days, according to the number of the seven Planets. Skene.

WEIGHT, Weigh.] A Weight of Cheefe or Wool, containing two hundred and fifty fix pounds; in Effes, the Weight of Cheefe is three hundred pounds. A Weight of Barley or Malt is fix quarters, or forty-eight bushels. There is also a Weight of Salt. See Stat. 9 H. 6. c. 8.

WEIGHTS, Ponderia.] And Measures; are used between buyers and sellers of goods and merchandise, for reducing the quantity and price to a certainty, that there may be the least room for deceit and imposition. There are two forts of Weights in use with us, viz. Troy-Weight and Avoir-dupois. Troy-Weight contains twelve ounces to the pound, and no more; by which are weighed gold, silver, pearl, jewels, medicinal, flesh, wheat-bread, &c. Avoirdupois contains sixteen ounces in the pound, by which grocery wares, copper, iron, lead, flesh, cheese, butter, tallow, hemp, wool, &c. are weighed. In this Weight twelve pounds over are allowed to every hundred, to as one hundred and twelve pounds make the Hundred Weight. Dall. 248.

In the composition of Troy-Weight, twenty pennyweights make an ounce, twenty-four grains a pennyweight, twenty nites a grain, twenty-four d roits a mite, twenty perits a dvoir, and twenty-four blanks a pence. The Troy-Weight is said to be 20s. sterling in the pound; and the Avoirdupois Weight 25s. sterling. 4 Spen. 74. 194.

Ether mentions a Weight, called a Tons-Weight, being the same with that we now call Troy-Weight; and, according to the same author, all our Weights have their composition from the Penny Sterling, which ought to weigh
WEIGHS.

WEIGHTS.

WEIGHTS.

to weigh thirty-two wheat-corns of the middle sort; twenty of which Pence make an ounce, and twelve such ounces a pound; but fifteen ounces make the Merchants' pound. *Ita, lit. 3. c. 12.

By Magna Charta, 9 H. 3. c. 15; Stat. 14 Ed. 3. fl. 1. c. 12; Stat. 6 Ed. 3. c. 10. 2. 2. c. 10, &c. there is but one Weight; &c. throughout the kingdom; but this is to be understood of the same species of goods; otherwise the Troy and Apothecaries Weights would not be permitted. Every City, Borough, and Town shall have a common Balance, with common Weights sealed; on pain of 101 in the City, 5l. in the Borough, and 40s. the Town. Stat. 8 H. 6. c. 5. But only Cities and Market-towns are to have common Weights, Balances, and Measures, by Stat. 11 H. 7. c. 4. By this latter statute, Weights are to be marked by the chief officers of places, and sealed, &c. Refusing or delaying to do it, is liable to a penalty of 40s. Allowing Weights not agreeable to the standard, incurs a forfeiture of 5l. &c. The Mayors and such officers are once a year to view all Weights and Measures, and burn and destroy those which are defective; also fine the offenders, &c. And two Justices of the Peace have power to hear and determine the defaults of Mayors.

By Stat. 35 Geo. 3. c. 102, the Justices in Quarter Sessions in every county are required to appoint persons to examine the Weights and Balances within their respective jurisdictions. These Inspectors may seize and examine Weights in Shops, &c. and seize false Weights and Balances; and the offender being convicted before one Justice, shall be fined, from 2o. to 5l. Persons obstructing the Inspectors to forfeit, from 40s. to 5l. Inspectors to be recompensed out of the County-rate. Standard Weights to be purchased by the Sessions out of the County-rate, and produced to all persons paying for the production thereof; informations to be within one month. The Act not to infringe on the authority of Corporations, Court-Leets, &c. But persons punished by this Act not to suffer under any other Statute or Law.

By Stat. 36 Geo. 3. c. 85, a Balance and Weights are to be kept in every Corn Mill, which may be examined by Inspectors appointed under the preceding Act; the provisions of which are extended to Corn Mills. See also Stat. 36 Geo. 3. c. 86, to prevent abuses and frauds in the Packing, Weight, and Sale of Butter; and Stat. 10 G. 3. c. 21, for regulating Weights, Balances, and Measures in Maryland; by means of Inspectors appointed by the Commissioners of Paving, &c.

It has been determined that although there had been a custom in a town to sell butter by 18 ounces to the pound; yet the jury of the Court-Leet were not justified in assisting the butter of a person who sold pounds less than that, but more than 15 ounces each; the Statute Weight. 3 B. Rep. 271. See further, title Measures.


WERE; See Were.

WERELADA, from the Sax. Were, i.e. Preirium capitis hominis suae, & Ladin. purgatur.] Where a man was slain, and the price at which he was valued not paid to his relations, but the party denied the fact, then he was to purge himself by the oaths of several persons, according to his degree and quality; and this was called Werelada. Leg. H. 1. c. 12. See next title.

WERELD, WEREELD, Werekeld.] The price of Homicide, or other enormous offences; paid partly to the King for the loss of a Subject, partly to the Lord whose valiant he was, and partly to the party injured, or the next of kin of the person slain. Leg. H. 1. See 4 Com. 183.

In our Saxon Laws, particularly those of King Atelstan, the several Werelgilds for Homicide were established in progressive order, from the death of the Coeol or peafant, up to that of the King himself. And in the Laws of King Henry I. we have an account of what other offences were then redeemable by Werekeld, and what were not so. The Werekeld of a Coeol was 266 thryzma, that of the King 30,000; each thryzma being equal to about 11 of our present money. The Werekeld of a Subject was paid entirely to the Relations of the party slain; but that of the King was divided, one half being paid to the Public, the other to the Royal Family. See further, this Dict. titles Appeal of Death; Homicide.


WESTMINSTER, Westminster, Sax. Westmaxfter, i.e. Occidentale Magnificat.] The ancient seat of King Edgar; and is now the well-known place where the High Court of Parliament, and Court of Judicature sit; it had great privileges granted by Pope Nicholas; among others, Ue amplius in perpetuum Regii constitutions lawsj fit atque regere dominum regis et inferiorum. 2. Loth. 375. See further, titles London; Police; Byng; Fish, &c.

WHALES, And Surgeon; See Royal Fishes.

WHALE-FISHING; See title Fishes; Fishery; and Fishing.

WHARF, Wharf.] A broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water. Stat. 12 Car. 2. c. 4. See title Harbours and Havens.

WHARPAGE, Wharfage.] Money paid for landing of goods at a Wharf, or for shipping and taking goods into a Boat or Barge from thence. See Stat. 22 Car. 2. c. 11.

WHARFINGER, He that owns or keeps a Wharf. See title Carrier.

WHEELY, Woeling.] Tributum quad rotariae nomine penditur; loc 5s. pro planta & carri transfecutis. Sicere.

WHELICOTES, The ancient Britishe chariot, that were used by persons of quality before the invention of coaches. Stow's Surn. Lond. p. 70.


WHERE, See Were.

WHITE-MEATS, Milk, butter, cheese, eggs, and any composition with which before the Reformation were
WIDOW, in meats in Rent.

WHITE-REN'Ts, A Duty or Rent payable by the Tanners in Devonshire to the Duke of Cornwall. See Quit-Rent.

WHITE-RENTS. Payments or Chief Rents referred in Silver or White Money, called White-Rents or Blanch-Rents.

WIGREVE, From the Sax. Wic, a place on the sea-shore, on the bank of a river. See Wic.

WILDFOWL, Are not to be destroyed by nets or otherwise, nor their eggs taken, under divers penalties. Stat. 25 Hen. 8. c. 11. See title Game-Law.

WILL, ESTATESAT; A species of Estates not Freeth. An Estate at Will is where lands and tenements are let by one man to another, to have and to hold at the Will of the Lessor, and the Tenant by force of this Lease obtains possession. Lit. § 68.

Such Tenant hath no certain indefeasible Estate, nothing that can be aligned by him to any other; because the Lessor may determine his Will, and put him out whenever he pleases. But every Estate at Will is at the Will of both parties, Lessor and Tenant, so that either of them may determine his Will, and quit his connections with the other, at his pleasure. Lit. § 55. Yet this must be understood with some restriction; for if the Tenant at Will sells his land, and the Landlord, before the Corn is ripe, or before it is reap'd, puts him out, yet the Tenant shall have the Emblems, and free ingress, egress, and regress, to cut and carry away the Profits. Lit. § 56. And this for the same reason upon which all the cases of Estates turn, viz. the Point of Uncertainty; since the Tenant could not possibly know when his Landlord would determine his Will, and therefore could make no provision against it: and having found the land, which is for the good of the Public, upon a reasonable presumption, the Law will not suffer him to be a loser by it. But it is otherwise, and upon reason equally good, where the Tenant himself determines the Will; for in such case the Landlord shall have the Profits of the land. Lit. § 55. See title Emblems.

What act does, or does not, amount to a determination of the Will on either side, has formerly been matter of great debate in our Courts. But it now seems settled, that, besides the express determination of the Lessor's Will, by declaring that the Lessee shall hold no longer; which must either be made upon the land, or notice must be given to the Lessee (as either of the Lessor, the exertion of any act of Ownership by the Lessor, as entering upon the premises, and cutting timber, taking a dillref for rent and impounding it thereon, or making a leasement, or lease for years of the land, to commence immediately; any act of Determination by the Lessor, as assigning his estate to another, or committing waste, which is an act inconsistent with such a tenure; or, which is suitor omnium, the death or outlawry of either Lessor or Lessee; puts an end to or determines the Estate at Will. 2 Comm. c. 9.

The Law is however careful, that no sudden determination of the Will by one party shall lead to the manifest and unforeseen prejudice of the other. This appears in the case of Emblems before mentioned; and, by a party of reason, the Lessor, after the determination of the Lessor's Will, shall have reasonable ingress and egress to fetch away his goods and utensils. Lit. § 69. And, if rent be payable quarterly or half-yearly, and the Lessee determines the Will, the rent shall be paid to the end of the current quarter or half-year. Stat. 41. § 1. 1 Stat. 339. And, upon the same principle, Courts of Law have of late years leaned a much as possible against confining Demesne, where no certain term is mentioned, to be Tenancies at Will; but have rather held them to be Tenancies from Year to Year so long as both parties please, especially where an annual rent is reserved; in which case they will not suffer either party to determine the Tenancy, even at the end of the year, without reasonable notice to the other, which is generally understood to be half a year. 2 Comm. 5, &c. and see this Dict. titles Sufferance; Lease.

The
WILLS.

The Notice must be to quit at the end of the year; and the time specified in the Notice will be supposed to be the end of the year, unless the contrary is shown. 1 Term Rep. 159. If the Notice is not good for one year, it is not good for the next; it being supposed that the Landlord has waited it. 2 Bro. C. R. 161.

If the Landlord gives notice to quit, and afterwards receives Rent for the time subsequent to the end of the year, it is a question for the Jury to determine, whether it was accepted with intent to waive the Notice. Cowp. 243. But a Distress for such Rent is an unequivocal Waiver of the Notice. 1 H. Bl. Rep. 311.

WILLS; or,

LAST WILLS and TESTAMENTS.

I. Of the Form and Manner of Making Wills and Codicils.

2. Nuncupative Wills.
3. Codicils.
4. Of various and contradictory Wills, Codicils, and Legacies. See this Dictionary, title Legacy.
5. How Wills shall be executed by a Testator, and attested by Witnesses.

II. Who are capable or incapable of making Wills.

2. Infants; Idiots; Lunatics: Others disabled by Temporal Incapacity; Deaf, Dumb, and Blind Persons.
3. Females Covert.
4. Persons under Darys.
5. Criminals; Traitors; Felons; Outlaws; Excommunicate; Papists.

III. What may be disposed of by Will.

1. Of the Statutes enabling Persons to dispose.
2. What Effects and Things are disposable.
3. Of Devises of Estates in Joint-tennency; by Curtesy, in Dower, &c., and of Property peculiarly circumstanced.

IV. Of the Reproduction of Wills.

2. Of the Rescission of Wills.

V. General Rules as to the Construction of Wills.

For further matter, connected with this subject, see this Dictionary, titles Defective; Estate; Executor; Executory Devise; Legacy; Remainders; Trust, or Fee-Tail, &c.

I. 1. A WILL or Testament is, "the legal Declaration of a man's Intention of what he will, to be performed after his death;" a Will or Testament being of no force till after the death of the Testator, or person making it. 1sty. 11.

A Will and a Testament, strictly speaking, are not words of the same meaning; a Will is properly limited to Land, and a Testament only to Personal Estate; and the latter requires Executors. Wills, by which Lands are disposed of, are regulated by several statutes made for that purpose, and are a Conveyance unknown to the old Common Law, which permitted a man only to dispose of his goods or personal property. So the word Devise seems most properly applicable to the disposition of Lands by Will; and Bequest or Legacy to that of Personal Estate. But in a course of time the words have come to be applied indiscriminately to a disposition of Lands or Goods, which are frequently and continually distributed and devised, at the same time, by the same Will. Burn. Real L. title Wills.

Upon the notion that a Devise of Land by Will is merely a species of Conveyance, is founded the following distinction between such Devises, and Dispositions of Personal Estate; that a Devise of a man's goods and personal property will operate upon all such personal estate as the maker of the Will dies possessed of, at whatever distance of time he may die after making the Will; but a Devise of Real Estate, will only operate upon such estates as were his at the time of executing and publishing his Will; so that freehold lands, purchased after making the Will, cannot pass under any Devise in that Will, unless the Will shall have been legally and formally republished subsequent to the purchase or contract. See post. IV. 1.

These Wills and Testaments are divided into two sorts; first, Written; and, secondly, Verbal, or Nuncupative.

The Law takes notice of a particular Gift, in the nature of a Will, made by any one in contemplation of immediate death, which is called Donatio causa mortis: A Gift in prospect of death. This is, where a man, being ill, and expecting to die, gives and delivers something to another, to be his in case he live; but, if he live, he is to have it again. In every such Gift, there must be a delivery made by the giver himself, or some person by his order, in his last sickness, while he is yet alive; for the Gift will not be good if the delivery is made after his death. This delivery, however, may be made either to the person himself, for whom the Gift is intended, or to some other for his use, which will be equally effectual, so as it is made in the life-time of the party giving. See titles Legacy; Donation causa mortis.

No Stamp-Duty whatever is imposed on Wills, till after the death of the Testator; when the Probate or Letters of Administration are charged with certain Duties, in proportion to the value of the deceased's property. A Will may therefore be written and executed, by the Testator, on unstamped parchment or paper.

2. A NUNCUPATIVE WILL extends only to the personal property of the Testator, and is his Intention, declared in his last hours, before a sufficient number of Witnesses, and afterwards reduced to writing.

As these Verbal Wills (which were formerly more in use than at present, when the art of writing is become almost universal) are liable to great impositions, and may occasion many perjuries, the Statute of Frauds, 1 Car. 2. c. 3. (amongst other things) made it

First, That no Written Will shall be revoked or altered by a subsequent Nuncupative one; except the same (the Nuncupative Will) be in the life-time of the Testator put in writing, and read over to him, and approved; and unless the same be proved to have been so done, by the oath of three Witnesses at the least; who, by statutes 4 & 5 Ann. c. 16, must be such as are admissible upon Trials at Common Law. See title Evidence II. 1.
WILLS AND TESTAMENTS I. 2-5.

But where a man by Will, in writing, devises the residue of his personal estate to his Wife, and the dying, he afterwards, by a Nuncupative Codicil, bequeathed to another all that he had given to his Wife; this was refused to be good: For, by the death of the Wife, the Device of the residue was totally void, and the Codicil was no alteration of the former Will, but a New Will for the residue. 2 Eq. adv. 328; T. Rawl. 152.

Secondly, That no Nuncupative Will shall be good, (where the estate thereby bequeathed shall exceed the value of 30l.) which is not proved by the oaths of three Witnesses at the least, who were present at the making of it: nor unless it be proved that the Testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his Will, or to that effect; nor unless such Nuncupative Will were made in the time of the last sickness of the deceased, and in the house of his habitation or dwelling, or where he hath been residant for the space of ten days or more, before the making of such Will except where such person was surprized, or taken sick, being from his own house, and died before he returned.

Thirdly, That after six months passed after the speaking of the pretended Testimonial words, no Testimony shall be received to prove any Nuncupative Will, except the said Testimony, or the substance thereof, were committed to writing within six days after the making the said Will.

Fourthly, That no Letters Testamentary, or Probate of any Nuncupative Will, shall pass the Seal of any Court till fourteen days at least after the death of the Testator; nor shall any Nuncupative Will be at any time received to be proved, unless Processe have first been to call in the Widow and nearest of kinred to the deceased, that they may contest the same if they please. Soldiers and Sailors, in actual service, may dispose of their moveables, wages, and personal estate, as they might before this Act.

See the Statute.

The Legislature has, by the above restrictions, provided against frauds in setting up Nuncupative Wills, by so numerous a train of requisites, that the thing itself is fallen into disuse, and is hardly ever heard of; but in the only instance where favour ought to be shown to it, when a person is surprized by sudden and violent sickness.

The words by which the Device is made, must be spoken with an intent to bequeath, not any loose, idle discourse in his illness; for the sick man must require the bystanders to bear witness of such his intention: The Will must be made at home, among his family or friends, unless by unavoidable accident, to prevent impromptus from strangers; it must be in his left hand; for if he recovers, he may alter his disposition, and has time to make a Written Will. It must not be proved at too long a distance from the Testator's death, lest the words should escape the memory of the Witnesses; (but which is permitted to be remedied by their writing down, within six days, what they heard the Testator say;) nor yet too hastily, and without notice, lest the family of the Testator should be put to inconvenience, or surprized. 2 Comm. c. 30.

3. A Codicil is a Supplement to a Will, or an Addition made by the person making the Will, annexed to, and to be taken as part of the Will itself, being for its explanation or alteration; to add something to, or to take something from, the former dispositions; or to make some alteration in the quantity of the Legacies, or the regulations contained in the Will. This Codicil may also be either written or verbal, under the same restrictions as regard Wills. 2 Comm. c. 52.

Whenever a Codicil is added to a Will or Testament, and the Testator declares that the Will shall be in force, in such case, if the Will happens to be void, for want of the forms required by Law in the execution, or otherwise, yet it shall be good as a Codicil, and shall be observed by the Administrator. And, though Executors cannot regularly be appointed in a Codicil, yet they may be substituted in the room of others named in the Will, and the Codicil is still good. If Codicils are regularly executed and witnessed, they may be proved as Wills; and so if they are found written by the Testator himself, they ought to be taken as part of the Will, as to the personal estate, and proved in common form by Witnesses, to be the hand-writing of the person making the Codicil, and by giving an account when, where, and how the same was found. Burn. Exc. Law.

4. If two Wills are found, and it does not appear which was the former or latter, both are void; but if two Codicils are found, and it cannot be known which was first or last, and one and the same thing is given to one person in one Codicil, and to another person in another Codicil, the Codicils are not void, but the persons therein named ought to divide the thing between them. But if the dates appear to the Wills or Codicils, the latter Will is always to prevail, and revoke the former; as also the latter Codicil, as far only as it is contradictory to the former; but as far as the Codicils are not contradictory, they are allowed to be both in force. For, though I make a Last Will and Testament irrevocable, or unalterable, in the strongest words, yet I am at liberty to revoke or alter it; because my own act or words cannot alter the disposition of Law, so as to make that irrevocable which in its own nature is revocable. If, in the same Will, there are two Clauses or Devises totally repugnant and contradictory to each other, it has been held, that the latter Clause or Devise shall take effect, on the same principle as respects prior and subsequent Wills. But it seems now, that where the same estate is given by a Testator to two persons in different parts of his Will, they shall be construed to take the estate as Joint-tenants, or Tenants in Common, according to the limitation of the Estates and Interests devised. 3 Eqk. 493; 1 Inst. 112, b. 6.

Where two Legacies are given to the same person by the same Will, or by Will and Codicil, the rule seems clear, that by the Devise of the same sum to a person by a second Clause in a Will as had before been given him by a former Clause in the same Will, he shall only take one of the Legacies, and not both. But where a Legacy is given to a person by a Codicil as well as by a Will, whether the Legacy given by the Codicil be more or less than, or equal to, the Legacy given by the Will, the Legatee shall take both; and if the Executor contrary to the payment, it is incumbent on him to shew evidence of the Testator's intention to the contrary. See title Legacy.

5. Several regulations have been made by the Law, in order to guard against any as to be in the Disposition of real estate by Will. As to such Wills as dispose of goods and personal property only, if the Will is written...
in the Testator's own hand, though it has neither his Name or Seal to it, and though there are no Witnesses to it, it is good, if sufficient proof can be obtained of the Hand-writing. And even if it is in another person's Hand, though not signed by the Testator, it will be good, if proof can be produced that it was made according to his instructions, and approved of by him. But as many mistakes and errors, not to say misfortunes, must often arise from so irregular a method of proceeding, it is the safer and more prudent way, and leaves less in the breach of the Ecclesiastical Judge, if it be signed and sealed by the Testator, and published in the presence of Witnesses. 2 Comm. c. 32.

It is expressly provided by Stat. 29 Geo. 2. c. 3, that all Devises of Lands and Tenements shall not only be in Writing, but shall also be signed by the party so devising the same, or by some other person in his presence, and by his express direction; and shall be witnessed and subscribed in the presence of the person devising, by three or four credible Witnesses; or else the Devise will be entirely void, and the land will descend to the Heir at Law.

In the construction of this statute, it has been adjudged, that the Name of the person making the Will, written with his own hand, at the beginning of his Will, as, "I John Mills do make this my Last Will and Testament,"

is a sufficient Screening, without any Name at the bottom. But this seems doubtful, unless the whole Will be written by the Testator himself: And the same and proper way is to sign the Name, not only at the bottom or end of the Will, but, as is usual and regular, at the bottom of each page or sheet of paper, if the Will contain more than one; and the Witnesses to the Will, seeing the Testator sign all the sheets, and put his Seal, (though this latter is not absolutely necessary in Law,) as well as his Name, to the last sheet, must write their Names under the Attestation in the last sheet only.

It has also been determined, that though the Witnesses must all see the Testator sign the Will, or at least acknowledge the Signing, yet they may do it at different times, Jones v. Dale, 5 Bac. AbI. But they must all subscribe their Names as Witnesses, in his presence, left by any possibility they should make a mistake; and that a Will is good, though none of the Witnesses saw the Testator actually sign it, if he owns it before them to be his Hand-writing. It is remarkable, that the Stat. 29 Geo. 2. c. 3, does not say the Testator shall sign his Will in the presence of the three Witnesses, but requires these three things:—First, that the Will should be in Writing: Secondly, that it should be signed by the person making the same: And, thirdly, that it should be subscribed by three Witnesses, in his presence. 4 P. Wm. 254. But it is not at all necessary that the Witnesses should be acquainted with the Contents of the Will: provided they are able, when called on, to identify the Writing; i. e. to say that the Paper, then shewed them, is the same they saw the Testator sign.

Though the Statute has required that the Witnesses to the Will shall witness it in the Testator's presence, (in order to prevent obtruding another Will in the place of the true one,) yet it is enough that the Testator might see the Witnesses: It is not necessary that he should see them signing; for otherwise, if a man should but turn his back, or look off, it might make the Will void. And in a case where the Testator desired the Witnesses to go into another room, seven yards distant, to witness the Will; in which room there was a window broken, through which the Testator might see them; it was, by the Court, adjudged to be a Witnessing in his presence. 5 where the Testator's carriage was drawn opposite the windows of an Attorney's office, in which the Witnesses attested the Will; this was clearly determined to be in the Testator's presence. 1 Bro C. R. 99. But if a Will is executed at one time, and at another time, afterwards, the Witnesses put their Names to it, the Testator being then insensible, this will not be a good Will, as it cannot be said to be witnessed in his presence, if he is unconscious of what is passing. Doug. 24, Right d. Cater v. Price.

A Will made beyond Sea, of lands in England, must be attested by three Witnesses. 2 P. Wm. 203.

A Will devising Copyhold land, witnessed by one or two Witnesses, or even without any Witnesses at all, is sufficient to declare the issue of a Surrender of such Copyhold lands made to the use of a Will; because the party to whom the land is given becomes entitled to it by means of the Surrender, and not by the Will. 2 Abr. 37: 2 Bro. C. R. 58.

The Witnesses to a Will ought to be disinterested. In a case formerly determined by the Court of King's Bench, the Judges were extremely strict in regard to the credibility, or rather the competency, of the Witnesses: For they would not allow any Legatee, nor by consequence a Creditor, where the Legacies and Debts were charged on the real estate, to be a competent Witness to the Devise, as being too deeply concerned in interest not to with the establishment of the Will; for if it were established, he gained a Security for his Legacy or Debt from the real estate, whereas, otherwise he had no claim but on the personal affects. 2 St. 125. This determination, however, alarmed many Purchasers and Creditors, and threatened to shake most of the Titles in the kingdom, that depended on Devises by Will. For, if the Will was attested by a Servant to whom wages were due, by the Apothecary or Attorney whose very attendance made them Creditors, or by the Minister of the Parish who had any demand for Tithes or Ecclesiastical Dues, (and these are the persons most likely to be present in the Testator's last illness,) and if in such case the Testator had charged his real estate with the payment of his Debts, the whole Will, and every Disposition therein, so far as related to real property, were held to be utterly void. This occasioned the Stat. 25 Geo. 2. c. 5, which refined both the competency and the credit of such Legatees, by declaring void all Legacies (and, in this are included, Devises of Lands and other Interests) given to Witnesses; and thereby removing all possibility of their Interest affecting their Testimony. The same Statute likewise established the competency of Creditors, by directing the Testimony of all such Creditors to be admitted, but leaving their Credit (like that of all other Witnesses) to be considered, on a view of all the circumstances, by the Court and Jury before whom such Will should be contested. And the Testimony of three Witnesses, who were Creditors, has been since held to be sufficiently credible, though the land be charged with the payment of debts.
II. 1. Regularly every person has full power and liberty to make a Will and Testament, who is not under some special prohibition by our Law, or by Custom; which prohibitions are principally upon three accounts:—1st. For want of sufficient discretion in the person making the Will;—2ndly, For want of sufficient liberty and free-will. —And, 3rdly, on account of their criminal conduct. 2 Comm. c. 32.

It may not be amiss, perhaps, first to mention a case which does not directly come under either of these heads, unless on some occasions it might be supposed proper to be referred to the third: An Alien, while living under the English Government, may obtain money, goods, and personal property; and may make a Will, and dispose of such property as he pleases; contrary to the ancient custom in France, where the King, at the death of an Alien, was entitled to all he was worth in that kingdom; a custom repealed under the reign of the late unfortunate Louis XVI. A distinction is made in some of the Law-books, between Alien Friends and Alien Enemies: But in the case of an Alien, the Subject of a State at war with England, if he lives here and trades, and is not guilty of any unfriendly act, he is permitted to dispose of his goods and money as freely as any Subject; and this under the idea that he has the King's licence for staying in the kingdom, and is therefore in some degree entitled to the protection and privilege of a Subject. But an Alien (Friend or Enemy), not being capable of acquiring any right in land for his own benefit, can never, therefore, have any real estate to dispose of. Yet it seems undoubted, that an Alien may be a Devisee, even of Lands, whatever the further effect of his making such lands may be. Powell on Devices.

Some doubts have arisen, but it is believed have never yet been brought before the Courts here, of the power of an Alien, during a temporary residence here, to devise his property in the Funds. It seems that such a Devise is certainly good, unless the Alien be positively refrained therefrom by the established Laws of his own country, or by his own Precontract. See further, title Alien.

It is particularly provided by the 35 Geo. 8. c. 5. § 14, that no person under the age of 21 years shall make a Will or Testament of any manors, lands, tenements, or other hereditaments. See 59. III.

It appears settled, however, that a Male Infant of the age of 14 years and upwards, and a Female of 12 years or upwards, are capable of making a Will respecting only Personal Estates; but as the Ecclesiastical Court is the judge of every Testator's capacity, and decides on disputes respecting the validity of Wills relating to Personal Estates, the discretion of the person making the Will may be disputed there, and his capacity of devolving, let him be of what age he will. But no custom can be good to enable any persons to make a Will, under the respective ages of 14 and 12 above mentioned. Burn. Ecll. L. Though, by custom, in particular places, Infants may devise lands after that age, and before 21. Burn. Ecll. L. See further, title Infant.

An idiot, or Natural Fool, notwithstanding be may be of lawful age, may not make a Will, cannot at any time make a Will or Testament, nor dispose of either of his lands or goods: And, on the same principle, persons who are grown childless, either through old age or any infirmity or debility, are, during the continuance of such incapacity, disbarred from making a Will. 2 Comm. c. 32.

Lunatics, during the time of their madness, cannot make a Will or Testament, nor dispose of anything thereby, and that for the most formidable of all reasons, their utter incapacity of knowing what they are doing: and it is a principle of Law, that in making Wills, integrity, soundness, and perfectness of mind are absolutely requisite; the health of the body merely not being regarded. Yet if such mad persons have lucid intervals of reason, then during the time of such intervals, if they are fully possession of a sound and disposing memory and understanding, they may make their Wills. Burn. Ecll. L. See this Dile, title Idiots and Lunatics.

Every person, however, is presumed to be of perfect mind and memory, unless the contrary is proved: And therefore, if any one attempts to call in question or overthrow the Will, on account of any supposed madness, or want of memory, in the Testator, he must prove such impediment to have existed previous to the date of the Will: But people of mean understanding and capacities, neither of the wise fort nor of the foolish, but indifferent betwixt both, even though they rather inclined to the foolish sort, are not hindered from making their Wills. The Law will not franchise into the depth of a man's capacity, particularly after his death, if he was able to conduct himself reasonably in the common course of life; as it might be opening a wide door to support pretensions of fraud or imposition on the Testator. Burn. Ecll. L. And if a person of a found mind make his Will, this shall not be revoked or affected by his subsequent infirmity. 4 Co. 61.

One overcome with drink is equally incapable of using his reason, during his drunkenness, as a madman: and therefore, if he makes his Will at that time, it is void. 2 Comm. c. 32.

Persons born Blind, Dofp, and Dumb, are incapable of making a Will, as they want the common inlets of understanding, and are incapable of having any desire of bequeathing or obtaining any knowledge with respect to property, or the disposal of it, and are in as helpless and ignorant a situation as idiots themselves; and even those who are only deaf and dumb by nature, do not make any Will, unless it very manifeftly appears, by fixing and convincing proofs, that such persons understand what a Will means, and they have a desire to make a Will; for if they are persuaded of such understanding, and desire, then they may, by signs and tokens, declare their intentions. Burn. Ecll. L.

A Blind Person may make a Nuncupative Will, by declaring his intentions before a sufficient number of Witnesses; and he may also make a Will in Writing, provided the Will be read to him before Witnesses, and in their presence acknowledged by him for his full Will; but if a Writing should be delivered to a blind man, and be, not hearing the same read, acknowledged the same for his Will, this would not be sufficient; for it might happen, that if he had heard the same read, he would not have acknowledged it for his Will. The bell way, therefore, in such a case, is, that the Will be read over to the Testator, and approved by him, in the presence of all the subscribing Witnesses; and although the Law of England does not expressly require this regulation, in respect to the Will of Blind Persons, yet a Court of
WILLS AND TESTAMENTS II. 2, 4.

Justice will demand satisfactory proof of some kind that the identical Will was read over to him, though it was not in the presence of the Witeness: it is therefore good policy to let all the subscribing Witeness be present at the reading over such a Will; as in case of any dispute, which may be more likely in such extraordinary circumstances, they will be most capable of affording complete satisfaction to the minds of a Judge and Jury.

Burn. Eccl. L.

The above precautions seem in like degree requisite in the case of a person who cannot read; for though the Law, in other cases, may presume that the person who executes a Will knows and approves the contents of it, yet that presumption will cease where, through defect of education, he cannot read, or is by sickness incapacitated to read the Will at that time. Burn. Eccl. L.

3. A Married Woman's is restrained and prevented from devising any land or real estate whatsoever; being particularly excepted out of the Stat. 34 & 35 H. 8. c. 5, enabling other persons to dispose of their lands and tenements by Will; and it is a general rule, that she cannot make any Will, even of goods or personal estate, without the licence or consent of her Husband; because by the Law, as soon as a man and woman are married, all the goods and personal estate, of what nature soever, which the Wife had at the time of the marriage, or may acquire after, belong to the Husband, by force of the marriage; which empowers him to make such part of them his own as are not absolutely vested in him immediately by the marriage; and therefore it would be an unreasonable law to give her a power of defeating that rule, by bequeathing those goods and chattels to another. 2 Comln. c. 32. See title Baron and Feme.

If a Woman makes a Will, and afterwards marries, and dies during the life of her Husband, yet being at the time of her death incapable by Law of devising, because her Husband is then living, the Will is void; for it is necessary, in order to make her Will of force in Law, that she had ability to make a Will; not only at the time of making thereof, when the Will received its being, but also at the time of her death, at which time only a Will can receive its strength and confirmation. 4 Rep. 60: 2 P. Wms. 624. If a Wife survives her Husband, a Will made during the marriage is not good; because she is, during such time, by Law restrained from making any Will: but if a Will is made during the marriage, and she survives her Husband, and approves and confirms the Will after his death, in this case it will be good, by reason of her new consent, and new declaration of her Will; for then it is, as it were, a new Will. See Jeff. IV. 1.

If a Woman makes her Will, and afterwards marries and survives her Husband, and dies a Widow, leaving such Will made before her marriage; it has been held, that the Will was revived, and in force. Flood. Comm. 343. But later determinations seem to have settled, that though she was able in Law to make a Will, both at the time of the execution of it and at her death, yet such Will shall not be good or valid in Law, without a re-publication; it having been once absolutely revoked and entirely made void by the marriage. See 2 T. Rep. 695.

Although a Married Woman is, generally speaking, so entirely under the power of her Husband, that she cannot make what in propriety of speech is called a Will, yet she may, with the consent of her Husband, make what is termed an Appointment, and which, though a Will, does not take effect till her death, and may be altered or revoked during her life; and the usual way in such cases is for the intended Husband to enter into marriage articles, or a bond, before marriage, in a sufficient penalty conditioned, to permit his Wife to make a Will, and to dispose of money or legacies to a certain value, and to pay what she shall appoint, not exceeding such value; and in that case, if after the marriage, and during it, she makes any Writing, purporting to be her Will, and disposes of Legacies to the value agreed on, though in strictness of Law she cannot make a Will, without her Husband's positive assent to the particular Will, but only something like a Will, yet this shall be good as an Appointment, and the Husband is bound by his bond, agreement, or guarantee, to allow the execution of it. 7 Comyn. c. 32. And this Will, or Appointment, ought to be proved in the Spiritual Court. 1 Burr. 431. Stone v. Fyffe, Doug. 707.

To the above general rules there are also some few other exceptions. The Queen-Consort is exempted from these restrictions, and she may dispose of her goods and personal estate by a Will, without the consent of her Lord. See title Queen.

If a married Woman is Executrix to some other person, and in that right has goods and chattels, these do not become the property of the Husband by marriage, because the has them not for her own use, but as representing the person of another; and therefore, in this case, she may, for the continuance of the executorship only, and for no other purpose, make an Executor, and consequently a Will, without the consent of her Husband; but she cannot, otherwise, dispose of the goods or chattels which the Law is permitted to give her a power of defeating in right of another, any otherwise than as by Law she is required to do as Executrix. See title Baron and Feme V.

If a married Woman has any pin-money, or separate maintenance, she may dispose of any savings made by her out of the same by Will, without the control of her Husband. Pre. Ch. 44.

Another remarkable exception is in favour of a married Woman, whose Husband is banished for his life by Act of Parliament; for she may make a Will, and act in every thing as if she was unmarried, or as if the Husband was dead. 2 Ves. 104. See title Baron and Feme VI.

Where personal property is given to a married Woman for her sole and separate use, the may dispose of it by Will without the assent of her Husband. 3 Bro. C. R. 8.

Where lands are conveyed to Trustees, a married Woman may have the power of appointing the disposition of them after her death, which Appointment must be executed like the Will of a Feme Sole, and will be subject to the same rules of construction. 2 Jeff. 610: 1 Bro. C. R. 99. And (though the contrary has been held) it has been determined by the House of Lords, that the Appointment of a married Woman is effectual against the Heir at Law; though it depends only upon an agreement of her Husband before Marriage, without any conveyance of the estate to Trustees. Bro. P. C. vi. 116.

4. A Will will be set aside which is made by a person in consequence of any threats made use of to him, whereby he is induced, through fear of any injury, to make
make such a Will as he would not otherwise have wished to do; and as to this, no certain rule can be laid down, but it is left to the discretion of the Court to determine upon the particular circumstances of the case, whether, or not such persons could be supposed to have a free Will in the disposing of their estates; and the judge will, on such an occasion, not only consider the quality of the threats, but also the persons as well threatening as threatened; and in the person threatening, his power and disposition; and in the person threatened, the sex, age, courage, pusillanimity, and the like. But if after making the Will, when there is no cause of fear, the maker of it ratifies and confirms it, it will be good in Law. Bur. Eccl. L.

If a Man makes a Will in his sickness, at the over-importance of his Wife, contrary to his own wishes and desires, and merely that he may be quiet, this is a Will made by restraint, and shall not be good. 8 Gry. 427.

The Ecclesiastical Court has jurisdiction of fraud or deception relating to a Will of personal estate, and can examine the parties by allegations concerning such fraud and deceit; and if the Will was falsely read to the Testator, then it is not his Will; but in the case of a real estate, a Will cannot be set aside even by a Court of Equity, for fraud or imposition, but must be tried at Law, on the question, whether the Testator did or did not in fact devise; the fraud or imposition in this case being a matter proper for a Jury to inquire into. Brandly v. Kirkridge, Bro. P. C. See this Dist. title Fraud.

5. A Traitor lawfully convicted of High Treason, by verdict, confession, outlawry, or otherwise; besides the loss of his life, shall forfeit to the King all his goods and chattels, and all such lands and freehold property as he shall have at the time of his committing such treason, or at any time after, and so consequent is unable to dispose of any thing by Will: and Traitors are not only deprived of the privilege of making any kind of Last Will, from the time of their being convicted and found guilty, but any Will made before, does, by reason of such conviction, become void, in respect both of goods and lands. But if any person convicted of Treason obtain the King’s Pardon, he is thereby restored to his former estate, and may make his Will, as if he had not been convicted; or if he had made any before his conviction and condemnation, such Will, by reason of the Pardon, recovers its former force and effect. See titles Treason; Forfeiture; Attainer.

A Felon, lawfully convicted, cannot make any Will, or other disposition of any goods or lands, because the Law has disposed thereof already; all his goods being forfeited to the King, who is to hold his freehold estate for a year and a day after his death, when it is foreclosed to the chief Lord of the fee; so that it cannot be in the power of the Felon to devise it. But in this case also, a Pardon restores him to his former estate and capacity of making a Will. See titles Forfeiture; Attainer.

The Will of a Felon de fes is void, both as to the Appointment of an Executor, and also with respect to any Legacy or Bequest of goods, for they are forfeited by the very act and manner of his death; but any Devise of Land made by him is good, as that is not subject to any Forfeiture. See titles Homicide; Forfeiture.

A Felon is not only out of the King’s protection and out of the aid of the Law, but also all his goods and chattels are forfeited to the King, by means of the Outlawry, although it should only be for Debt, and even though the action in which he is outlawed is not just, nevertheless his goods and chattels are forfeited, by reason of his contempt in not appearing; and therefore he that is outlawed cannot make his Will of his goods so forfeited. But a man outlawed for Debt, or in any other personal action, may, in some cases, make Executors; for he may have Debts upon Contract, which are not forfeited to the King, and those Executors may have a Writ of Error to reverse his Outlawry. Bur. Eccl. L. See title Outlawry.

It is the better opinion, that an Excommunicated Person may make a Will; though some disputes have heretofore arisen as to the effect of what is called the greater and lesser Excommunication; but these niceties are nearly put an end to, by the unfitness of the cause ever happening at this time. Bur. Eccl. L.

With respect, however, to the Wills of Traitors, Felons, Outlaw, Etc. though they are void as far as concerns the King, or the Lord who is entitled to the forfeiture of their lands or goods, yet the Will is of force against the Testator and his representatives, and all other persons whatsoever; so that if the King or the Lord pardons the Forfeiture, the Will is suffered to take effect.

Formerly Papists were under several disabilities, both as to the purchasing Lands and taking them by Deceit or Device; but those are now done away, and Papists rendered capable of purchasing and deviling Lands, and having them by Deceit, Purchase, and Device, on taking the oaths prescribed to them by the Act of the 18th Geo. 3. c. 60. See title Papists.

III. 1. Anciently there were in different parts of the kingdom, and particularly in Wales, and in the province of York, and in London, several Customs, the remains of the old Common Law, which prevented persons from disposing of more than the one-third part of their Goods and Personal Property: And this restraint continued till very modern times, when, in order to favor the power of bequeathing, and to reduce the whole kingdom to the same standard, three Acts of Parliament have been provided; (one, Stat. 4 & 5 W. & M. c. 2, explaining by Stat. 2 & 3 Anne, c. 5, for the province of York; another, Stat. 2 & 3 Will. 3, c. 38, for Wales; and a third, Stat. 11 Geo. I, c. 18, § 17, for London;) whereby all persons within those Dioceses, and liable to those Customs, are enabled to dispose of all their money and other personal estate by Will, and the claims of the Widows, Children, and other relations, to the contrary, under presence of the Custom, are totally barred. Thus is the old Common Law, restraining Devils and the Customs in those places, which were the relics of it, entirely abolished throughout all the kingdom of England, and a man may give the whole of his chattels by Will, as freely as he formerly could his third part; in disposing of which, he was bound, by the custom of many places, to remember his Lord and the Church, by leaving them his two best chattels; and afterwards he was left at his own liberty to bequeath the remainder as he pleased. 2 Comm. c. 32. These Customs, however, as far as they respect the distribution of an Intestate’s estate, still remain in force. See title Execut. V. 9.
WILLS AND TESTAMENTS II. 1, 2.

It seems sufficiently clear, that, before the Conquest, Lands were devisable by Will. Wright of Tenures 172.

But, upon the introduction of the Military Tenures, the restraint of devising Lands naturally took place, as a branch of the Feodal Doctrine of Non-alienation without the consent of the Lord. See title Tenures. And some have questioned, whether this restraint was not founded upon truer principles of Policy, than the power of wantonly diminishing the Heir by Will, and transferring the estate, through the dower or curtesy of the Ancestor, from those of his Blood to utter Strangers.

See 1 Comm. c. 23.

However this be, we find that, by the Common Law of England since the Conquest, no estate, greater than for term of years, could be disponibled by Testament, except only in Kent, and in some ancient Burghs, and a few particular Manors, where their Saxon immunities by special indulgence subsisted. 2 Inst. 7: Litt. § 167; 1 Inst. 111. And though the feudal restraint on Alienations by Deed vanished very early, yet this on Wills continued for some centuries after; from an apprehension of infancy and impostion on the Tenant in extremis, which made such Devises suspicious. Besides, in Devises there was wanting that general notoriety, and public designation of the Successor, which, in Deeds is apparent to the neighbourhood; and which the simplicity of the Common Law always required in every transfer and new acquisition of property. 2 Comm. c. 23.

But when Ecclesiastical Ingenuity had invented the Doctrine of Uies, as a thing distinct from the Land, Uies began to be devised very frequently, and the Device of the Uie could in Chancery compel its execution. For it has been observed, that, as the Pope's Clergy then generally sat in the Court of Chancery, they considered that men are most liberal when they can enjoy their possessions no longer: and therefore at their death would choose to dispose of them to those who, according to the superfluous of the times, could intercede for their happiness in another world. But when the Statutes of Uses had annexed the Possession to the Uie, these Uies, being more than the Land itself, became no longer devisable. See title Uies. This might have occasioned a great revolution in the Law of Devises, had not the Statutes of Uses been made, about five years after, viz. the flat. 3 H. 8. c. 1, explained by flat. 35 & 36 Hen. 8. c. 53, which enacted, that all persons being in Fee-simple (except Ferme-coverts, Infants, Idiots, and perones of insane memory) might by Will and Testament in Writing devise to any other person, except to Bodies-Corporate, two-thirds of their Lands, Tenements, and Hereditaments, held in Chivalry, and the whole of those held in Sosage; which now, through the alteration of Tenures by the Statute of Charles the Second, amounts to the whole of their Landed Property, except their Copyhold Tenements; and their latter pafs, as we have been, rather by Surrender than by Will: and in the latter case, rather as Perfonal than Real Property. 2 Comm. c. 23.

Corporations were excepted in these statutes, to prevent the extension of Gifts in Mortmain; but now, by confirmation of the flat. 43 Eliz. c. 4; it is held, that a Devise to a Corporation for a Charitable Uie is valid, as operating in the nature of an Appointment, rather than of a Bequest. See titles Mortmain; Charitable Uies.

With regard to Devises in general, experience soon shewed how difficult and hazardous a thing it is, even in matters of public utility, to depart from the Rules of the Common Law, which are so nicely constructed and so artificially connected together, that the least breach in any one of them disorders for a time the texture of the whole. Innumerable frauds and prevarications were quickly introduced by this parliamentary method of inheritance: For feoffie was the construction made upon this Act by the Courts of Law, that bare Notes in the Hand-writing of another person were allowed to be good Wills within the statute. To remedy which the Statute of Frauds and Perjuries, 29 Car. 2. c. 3, already so fully stated, was passed: And to remedy the further inconveniences, as to Wills, the flat. 25 Geo. 2. c. 6, (see ante l. 57) was found necessary. One inconvenience more was at length found to attend this method of Conveyance by Devise; in that Creditors by Bond and other Securities, which affected the Heir, provided he had Affets by Devise, were now debarred of their Securitie, not having the same remedy against the Devisee of their Debtor. To obviate which, the flat. § 6 & W. W. Q. c. 13, provided, that all Wills and Testaments, Limitations, Diversions, and Appointments, of real Estates by Tenants in Fee-simple, or having power to dispose by Will, shall (as against such Creditors only) be deemed to be fraudulent and void: And that such Creditors may maintain their actions jointly, against both the Heir and Devisee. A Devise to raise a portion for younger Children, according to an agreement before marriage, and a Devise for payment of Debts, are exceptions in the statute, § 4. But it has been held, that the payment of the Debt must be provided for effectually, in order to bring it within the exception. 1 Bro. C.R. 311; 2 Bro. C.R. 514.

2. More immediately as to what Things are devisable.—In general it may be stated, that every thing in which a man has the absolute property may now be devised by his Will; disputes at present arising only as to the words of the Instrument, and the capacity to dispose. Thus, Rents, Tithes, Manors, Reces, Sieges, and Annuities, may be devised; by virtue of the words of the Land, Tenements, and Hierarchy, in the Statutes of Wills. So may Reversions, and vested Reminders expectant after an Estate-Tail; and Trust-Estates by the Ceilial quit-Trust. See Powell on Devises.

Elettes par autre vie are devisable, by flat. 20 Car. 2. c. 3. § 12, by a Will attested by three Witnesses. See titles Occupant; Life Estate.

If any one has money owing to him on Mortgage, he may devise this money to be paid when it becomes due. Burn. Esc. L. See 1 Inf. 299; and this Dist. title Mortgage.

The right of prelenting to the next Avoidance, or the Inheritance of an Adowison, of a Benefice, may be devised; so also a Donative may be devised. Powell on Devises. And a Devise of the next Turn, or Presentation, carries the next Turn of presenting absolutely to the Devisee, and not merely the right of getting himself presented. 2 Black Reo. 1240. And such Devise may be made by an Incumbent or Parson of any Church, to whom the Inheritance of the Adowison of that Church belongs, though he is the Incumbent or Parson of the Church when he dies; for though the Will has no effect
but by the death of the Testament, yet it has a beginning in his life-time; and the disposition and bequest will be good also, if he appoints by his Will who shall be preferred to the Church by his Executors, or that one Executor shall present the other, or that his Executors shall grant the Advowson to any particular person. This case being distinguished and excepted from the general rule as to Advowsons, which are by Law forbidden to be disposed of while there is no Incumbent, and the Church is empty, in order to restrain the practice of Simony.

If a man has agreed to purchase an estate, and the Buyer and Seller enter into articles for the purchase, and the Buyer dies, having by his Will devised the land to be agreed to be purchased, before any deed to convey the same is made to him; the land will, in Equity, pass to the Devisee; the Seller only standing as Trustee for him, and whom he should appoint, till a regular conveyance be executed. 1 C. C. 39; 2 Term. 679; 1 Term. 466.

A Lease for any number of yeares, determinable upon a Life or Lives, or a Lease for 500 or 1000 years, or any other term absolute, may be given and disposed of by Will, as Personal Estate. Barn. Eccl. L.

Some of our old Writers on the Law of Wills have very carefully stated, that if a person devises to another a horse or a yoke of Oxen, the Legacy is good, though the Testamentary may have no Horse or Ox of his own, either at the time of his death or making his Will; and that in that kind of Legacy the rule is, that if the words of the Devise are directed to the person to whom the Legacy is given, at, "I will that A. shall have a Horse;" the choice of the Horse belongs to the Legatee; but if the words are directed to the Executor, as, "I will that my Executor give to A. a Horse;" the choice belongs to the Executor; and they add, that both parties should be reasonable in their choice, that the Legatee may not choose a Horse of too great value, or the Executor one of too little. Swymb. Barn. Eccl. L.

If one of two Joint-tenants, during his life-time, devise his share in the land, and die, this Devise will not be good; and the person to whom the Joint-tenant has devised his share, takes nothing, because the Devisee does not take effect till after the death of the Joint-tenant, and the survivor takes the whole land by a prior title, and then it is to say, the Deed of Purchase. Barn. Eccl. L.

And although the Joint-tenancy is severed before the Testamentor's death, yet if the Will be made before the forfeiture, it will have no effect, unless there is a Repudiation of the Will after the partition. 3 Barn. 1497.

By stat. 20 H. 8. c. 2, Widows may bequeath the Crop of their Ground, as well of their Dowers as of their other Lands and Tenements; and by stat. 28 H. 8. c. 11, if the Incumbent of a Living, before his death, has caused any of his Glebe Lands to be manured and sown at his own expense, with any Corn or Grain, he may by his Will devise such Corn, and all the profit of it, growing on the Glebe Land so manured and sown. So if a man is possessed of Land for the term of his life only, and the land after his death descends to his heir, yet he may devise the Corn growing on the land at the time of his death, away from the Heir, to some other person; although, he has it not in his power to devise the land whereon it grows. Barn. Eccl. L. — So where a man has Lands in right of his Wife, or is Tenant by the Curtesy of Lands, and sows them with Corn, he may devise the Corn growing on the land at his death: And if the Husband, or Tenant by the Curtesy, lets the lands to another, who sows the ground, and afterwards the Wife, or the Tenant by Curtesy, dies, the corn not being ripe; yet, in this case, the person to whom the lands were let is entitled to the Corn, and may devise it, notwithstanding his estate and interest in the land is determined. 1 T. 203; 2 Burr. 173.

But Trees, and other things fixed to the Freehold, or Heri- loos, which by custom go to the Heir with the House, are not devivable but by him who has the Fee-simple. 4 Co. 64: 1 Inf. 185. See title Heir.

An Executor or Administrator cannot devise those goods which he has as Executor or Administrator, and which belong to the person to whom he is Executor or Administrator; but the same must be applied in payment of that person's debts, and distributed in a due course of Law; the Executor or Administrator having those goods only for such particular purposes, and not to their own absolute use. Nor can a Husband devise any effects which his Wife has as Executor, for the like reason. Barn. Eccl. L. See titles Executor, and Feme.

Although the Personal Estate of the Wife becomes the property of the Husband immediately on marriage, as he is thereby enabled to make all debts due to her, and bonds for money given her before marriage, his own; yet unless he recovers such debts during the marriage, and renew the bonds, and takes in his own name, he has not such an absolute interest in them as to be able to devise them by his Will; but they will, after the death of the Husband, again become the property of the Wife. 1 Inf. 351. But if a Woman's fortune, or any part of it, consists in Bonds given her before marriage, and the Husband on the marriage makes a settlement on her in consideration of such fortune, notwithstanding the Bonds are not renewed during the marriage, yet the Husband will be entitled to them, being in his own name. If the husband, having first and foremost the husb. of the husband, before marriage, has not such an absolute interest in them as to be able to devise them by his Will; but they will, after the death of the Husband, again become the property of the Wife. 1 Inf. 185; 1 T. 203; 2 Burr. 173. See title Heir. But Trees, and other things fixed to the Freehold, or Heri- loos, which by custom go to the Heir with the House, are not devivable but by him who has the Fee-simple. 4 Co. 64: 1 Inf. 185. See title Heir.

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IV. 1. The Republication of Wills has already been alluded to. A Will as to the disposition of Land, and in some other circumstances, takes effect, or is hindered from doing so, according to its date; it is therefore necessary, on certain occasions, to renew it, as it were; or in fact to make a new Will. And if the Testator is exactly of the same mind, as to the method of the dispoal of his property, and circumstances only require that the Will should have date at any particular time, it will be sufficient for him to call in three proper Witnesses, and before them declare the signature to be his Hand-writing, and use the same forms as in the original execution. And the three Witnesses must sign their names to such new Will or Republication, mentioning the date thereof.

A new Publication of a Will is in truth, as has been already said, making it a new Will; so that after such Publication it has the force and operation of a Will just made at the time of such Publication. Therefore, if a man by his Will devises " all his Lands," and after making the Will purchases other lands; and then publishes his Will, this new Publication has made it a new Will, and consequently by the Devise of all his Lands the newly-purchased lands shall pass; for there is no necessity to make any alteration in this case in the Will, the words being sufficient, upon the new Publication, to convey all the lands he had at the time of such Publication. So if a man by his Will devises all his Lands to certain ufe, and afterwards purchases Copyhold Lands, and renders them to the ufe declared, or to be declared, (or to the ufe declared only;) by his last Will; this has the effect of a Republication of his Will, as to such after-purchased Copyhold Lands, and they shall pass thereby.

If an ufe of the lands to the devisee is to pass under the general Devise, but his heirs only, and afterwards the devisee, the words should be so altered as to make the devisee take the ufe of the lands personally, and not as heir at law. For if the devisee shall recover the lands by the Words of the Will, it is equally implied that the devisee shall take, and not his heirs only, which is inconsistent with the situation of the devisee as the devisee of the lands.

Revolutions of Wills may arise from various causes both in Fact and Law, and is either express or implied. Express, as if the Testator absolutely cancels the Will, by tearing up the Will and the signature; or if he destroys or burns the whole Will, or expressly declares his mind that his Will should be revoked. Revocations are implied where the statute or condition of the person devising, or of the estate or thing devised, is altered, after making the Will. The consequences of a Revocation of a Will, which may frequently take place without the knowledge, or even against the consent, of an uninformed Testator, it is necessary to state the principles of the Law on this subject something at length.

By the Statute of Frauds, &c. 29 Car. 2. c. 3, no Devise of Land in Writing shall be revocable, otherwise than by another Will, or some other Writing, to be executed in the presence of three Witnesses; or by burning, tearing, or canceling the Will containing such Devise, by the person making the same, or in his presence, or by his consent.

But it has been determined (since, as well as before, this statute) that, without an express Revocation, if a man who has made his Will afterwards marries, and has a child or children, whether such child is born before or after his death, this is a presumptive or implied Revocation of his former Will which he made in his state of celibacy, as well as to his Real as to his Personal Estate; and the statute does not extend to this case, but he shall be said to die intestate; the Law supposing that he must mean to provide in the first place for his family, and distributing his estate for their benefit accordingly. See 5 Term Rep. 49. — This however being only a presumptive Revocation, if it appears, by any expression or other means, to be the intent of the Testator that his Will should continue in force, the marriage will be no Revocation of it. As in the case, where a man devised an estate to a woman, whom he afterwards married, and when
WILLS AND TESTAMENTS IV.

When he died he was with child of a son, yet the Will was determined to be good, and not revoked by the marriage. And such implied Revocation may, in all cases, be rebutted by parol evidence. 

If a man by his Will devises his land, and afterwards repurchases it, yet the Will stands revoked (as to the land) by the sale, and the repurchase is no declaration of the Testator's mind to set it on foot again, without a Reproduction. Powell on Duplicates.

If a woman before marriage makes her Will, and thereby devises her land to A, and afterwards marries him or any other, and then dies, yet neither A nor the Husband take any thing by his Will, the marriage being, in Law, a Revocation of it; and a Married Woman not being capable of making a Will of Lands. See ante 2.

Where a man possessed of Stock or Money in the Funds, devises the exact quantity he is possessed of to any one or more persons by his Will, this is a specific Legacy; and if the Testator afterwards, before his death, sells any part of the Stock to devised, such Sale shall operate as a Revocation (or, as the Law terms it, an Aemption or taking away) of so much of the Legacy as shall be sold; and the Legatee or Legatees shall be only entitled to so much Stock as actually remains at the time of the Testator's death; and if there is no Stock at all remaining, the whole Legacy is gone, and the Legatees cannot come on the other part of the estate for a satisfaction. If the Testator however, after sale of part of the Stock, purchases other Stock, this shall restore the Legatees to the amount of such purchase. See title Legacy 1.

In the case of Lands, where the Law does not imply a Revocation, it must be in writing, operating as a Will, and signed by the person making the Will; or by some writing, by which the Testator declares his intention to revoke the first Will, and signed by three Witnesses, pursuant to the Statute of Frauds.

A subsequent Devise to another person, though he may be incapable of taking, is a Revocation of a precedent Devise to a person who was capable of taking; as it serves to thwart the intent of the Testator to revoke the first Devise, though the second cannot take effect. See Sprague v. Stout, cited Doug. 35.—But one Will cannot be revoked by another Will, though it should contain a clause declaring all former Wills to be revoked, unless the second is valid and effectual as a Will. 2 P. Wms. 343. Yet a Will may be revoked by an instrument written merely for the purpose of Revocation, if it is signed by three Witnesses; and the Testator must sign it in their presence, which, as already noticed, is not necessary in the execution of a Will. 3 Comn. c. 23; in n.

If there is a Duplicate of a Will made, and deposited in the hands of an Executor, or other person; in such cases, a cancelling of that part of the Will which is in the possession of the Executor is a sufficient Revocation of both the parts, as well as that in his own hands as the Duplicate in the hands of the Executor; they being both in fact but one Will. Doug. 49. So, if a Testator makes a second Will, and duly executes the same, it shall, without any thing further, revoke and make void the former Will and Duplicate.

Where a latter Will is the instrument by which a former is revoked, the Revocation effectuated thereby is absolute until the death of the Testator; for although, by making a second Will, the Testator intends to revoke the former, yet he may change his intention at any time before his death; (until which neither of his Wills can have operation;) and then the latter, being a revocable instrument itself, and only affecting the former as far as it itself is efficient, being revoked, is as to Will; the consequence of which is, that the first Will never having been cancelled, but remaining entire, stands in like manner as if no other had been made. 2 Brev. 2542. But if a prior Will be made, and then a subsequent one expressly revoking the former, in such case, although the first Will be left entire, and the second Will be afterwards cancelled, yet the better opinion fancies to be, that the former is not thereby set up again. See Comp. 433. If a Testator, having made a new Will, actually cancels the former Will by tearing off the name and seal, &c., and afterwards cancel the latter Will, the former Will is not revived thereby, although a Counterpart thereof be found in his possession uncanceled and unsealed; because the Revocation is here an express, independent, subjunctive Act; by which the former Will becomes, to all intents and purposes, void, and incapable of taking effect, unless as a new Will by force of a Reproduction. Powell on Duplicates.

Revocations of a Will may also take place by an actual or intended alteration in the estate of the Testator. And here it is necessary to observe, that the principle which governs cases of such actual alteration, is clearly distinguishable from that which governs cases of an intended alteration only: In the former cases, the Revocation is a consequence of Law, unaccompanied by, and independent of any intent in the Testator to revoke or not; but, in the latter cases, the Revocation is an inference from the fact, as furnishing a ground to conclude that such was the intent of the party. Powell on Duplicates.

The following general principles will explain the nature of such Revocations, and the decisions of the Courts thereon; and the instances quoted, though few, may suffice in a Work of this nature:

There is no feature in our Law more prominent than that of an uniform solicitude, on every occasion, to favour the Heir, and prevent his disinheritance: This anxious attention to the interest of the lawful Representative has introduced into the Law respecting Devises this fixed principle; namely, that as at the inception of his Will a man must be seised of the estate he devises, so the Law requires that such estate should remain in the same plight and unaltered, to the time of its consummation by his death; and that his original intention in respect thereto should continue, unremittingly, the same until the object of it takes effect, when the Will is consummated thereby; and therefore not only any alteration or new modelling which makes it a different estate, but all any intent of the owner to alter or new-model the estate, will constitute a Revocation of Law, render a disposition of it by Will invalid. See Powell on Duplicates, title Revocations, and the cases there cited.

Any alteration whatever in a Freehold Estate will operate as a Revocation; even although the act done be necessary to give effect to the disposition made by such
Devise. 3 P. Wms. 163, 170. And the rule of Law will be the same, although the act be expressly declared to be done with a view to give effect to the Will, if, in its operation, the Devise be in as of a new purchase; for the rule being introduced with a view to preserving the inheritance in the Heir at Law, and not with a view to carry into execution the intent of the Devise, the question is not, whether the Devise intended to do that, but whether he intended to do so that, the effect of which in Law will be to alter the estate interest which was in him, by passing it away, and taking it back through a new channel; for if that be his intention, whether he meant to revoke or not is immaterial; the alteration operating as a Revocation in Law, and not as a Revocation by the party; and therefore taking effect without reference to the intent of the party, as to the stability or non-stability of the Will. Powell on Devise. See 2 Ack. 579.

Since Courts of Equity have considered Articles for the Sale of Estates, or respecting the Settlement of them, as of the nature of actual Conveyances, from the time at which they are agreed to be carried into execution; even Covenants, when the Covenantant has a right to a specific performance, have been allowed in Equity to operate as Revocations of Wills previously made. 2 P. Wms. 319, 624.

But, upon the principle that no actual alteration is made in the thing devised, the changing of Trustees, where the estate originally devised is only the Trust, will not amount to a Revocation. 1 C. R. 43: 2 C. R. 109.

Not though the estate is absolutely conveyed to different parties from those who had it at the time of the Devise; as in the case of an intended Purchase being completed, or a Mortgage paid off by the Tenant. Fullerton v. Watt, Doug. 561: Diez J. Gibbons v. Pett, Doug. 710: 3 P. Wms. 170: 1 Wilj. 311.

Under the head of intended alterations of his Estate by the Devisee may be arranged those cases, where the Devisee, after making his Will, attempts a disposition of his Estate, and intends a complete Conveyance, but fails therein, either for want of due formalities in the Instrument that he uses, or from an incapacity to take, in the person to whom he means to convey: In these cases of intended Alteration, it may be shown that the Devisee had no intent to alter the disposition he has made; and if that be made out in proof, no Revocation will ensue from the circumstance of there having been such imperfect Conveyance. Powell on Devise.

In all cases, where a person having lands in Fee devises them, and then parts with or conveys them away, though he afterwards, may immediately, takes a new Estate in Fee, this will be a Revocation of his Will. 1 Rep. 516, pl. 1: 2 Ack. 566: Darley v. Darley, Bro. P.C.: 1 Eq. Ab. 412, c. 12; and see Powell on Devisee. As where a person having made his Will, and thereby devised his real Estate, afterwards, in contemplation of an intended marriage, conveys that estate to Trustees for the use of himself and his Heirs till the marriage should take effect, and after the marriage for other particular uses; but happens to die before any marriage had; this has been determined to be a Revocation of his Will as to the disposition of such Estate. Serra, P. C. 124: 4 Burr. 1561: See Powell on Devisee. But in the case of Copar-
V. The most general and comprehensive Rule, as to the Contraction of Wills, is; That a Devise be most favourably expounded, to pursue, if possible, the will of the Devisor, who, for want of advice or learning, may have omitted the legal or proper phrases; And, therefore, many times, the Law dispenses with the want of words in Devises, that are absolutely requisite in all other instruments. Thus a Fee may be conveyed without words of Inheritance; and an Estate-tail without words of Procreation. By a Will also an Estate may pass by mere Implication, without any express words to direct its course. As where a man devises lands to his Heir at Law, after the death of his Wife: Here, though no Estate is given to the Wife in express terms, yet she shall have an Estate for life by Implication; for the intent of the Testator is clearly to postpone the Estate to her after her death; and, if she does not take it, nobody else can. 1 Pet. 3. 7. But it seems, that if it is given to a Stranger, after the Wife's death, the Devise raises no Implication in favour of the Wife, for it may descend to the Heir during the life of the Wife. Cro. Jac. 75. So also, where a Devise is of Black-act to A. and of White-act to B. in Tail, and if they both die without issue, then to C in Fee; here A. and B. have Crofs Remainders by Implication, and on the failure of either's issue, the other or his issue shall take the whole; and C. remainder over shall be postponed till the issue of both shall fail. But where Crofs Remainders are to be raised between more than two, the presumption is against them. See title Remainder. And, in general, where any Implications are allowed, they must be such as are necessary, (or at least highly probable,) and not merely possible Implications. And herein there is no distinction between the rules of Law and of Equity; for the Will, being considered in both Courts in the light of a Limitation of Uses, is construed in each with equal favour and benignity, and expounded rather on its own particular circumstances, than by any general rules of positive Law. 2 Comm. c. 23.

The intention of the Testator is laid, by Coke, to be the pole star to guide the Judges in the explication of Wills; but though it is allowed to be thus-considered, in order to explain the words of the Will, yet such intention must be collected from the Will itself, and not from any reports or evidence concerning it; the Courts having been at all times careful of admitting verbal testimony in respect to a Will: And little credit being due to any thing that may have fallen from a man himself before or after making his Will; it often appearing that insinuations may be thrown out purposely to mislead those who were interested in the disposal of his property. Though a Parol Averment shall not be admitted to explain a Will, so as to expound it contrary to the import of the words, yet, when the words will bear it, a Parol Averment may be admitted. As, for instance, to ascertain a person; but in no case to alter the estate. 1 Term. 295, Sleade v. Barret: 5 Rep. 68, Lord Chelmsford's Case.

Other Rules of Construction are the following; all consistent with, and dependent upon, that, which lays down the intent of the Testator as the general guide for the exposition of doubtful circumstances:—Where the words of a Will have a plain meaning, and no doubt is in any matter within or without the words, touching the matter of the Devise, there the words of the Will shall always be taken to be the intent of the Devisor, and his intent to be what the words say. 2 And. 17. All the words of a Will are to be carried to answer the intent of the Devisor; but this is to be understood in cases where the intent of the party may be known by the words that are in the Will. 2 And. 10, 11, 134. If there are inconsistent and contradictory words in a Will, some words must be rejected to make it whole. Thus, where a Testator gave the interest of a sum of money to Mary Comforter, his Daughter, for her life, and after her decease gave the money between Charles Comforter, her Husband, and their Children: And in another part of the Will be laid, "And in case there be no such Child or Children, I give it to Charles Comforter and such Children."—Lord Chancellor rejected the latter words, as they were absurd and contradictory. 5 New Abr. 325: Ms. Pep.

A Will must have a favourable interpretation, and as near to the mind and intent of the Testator as may be; yet so withal as his intent may stand with the rules of Law, and not be repugnant thereunto; it being a rule or maxim of Law, Quod ultima voluntas testatores promulga at, fuscandid veram intentionem.—And where Debts, or legacies uncertain, supersedam quos mundat furtum judicis parere pecunia of. In Deeds the rule of Construction is, that the intention must be directed by the words; but in Wills, the words must follow the intent of the Devisor; and such a Construction is to be made of them, as to make use of all the words, and not of part, and so as they may stand together, and have no contrariety in them. Ship. Abr. part 10, voc. Testament: Bridg. 105. See Rich. Words.

Such a sense shall be made of a Devise, that it may be for the profit of the Devisee, and not to his prejudice.—General and doubtful words in a Will shall not alter an express Devise before, nor carry any thing contrary to the apparent intent.—The clauses and sentences of a Will shall be severally understood to serve the meaning of it; and Construction shall be made of the words, to satisfy the intent, and they shall be put in such order as the intent may be fulfilled.—No sense may be framed upon the words of a Will, wherein the Testator's meaning cannot be found. Ship. Abr. voc. Testament.

One part of a Will shall be expounded by another: As where a man leaves an estate to another and his Heirs, and afterwards mentions to have given him an estate tail, Heirs shall be taken to mean Heirs of the body, and the Devisee shall take only an estate tail. 2 Term. 207, Bramfield v. Pepem. See further on this subject, Burr. 912—924; 1110—1112; 1 Pyn. 112.

Notwithstanding that Wills are thus generally favoured, yet where a person endeavours to make a settlement of his estate against the reason and policy of the Common Law, the Judges are bound to reject it. And where a man, by his Will, makes no other disposition of his land than the Law itself would have done, had he not made any Will, there such a Will is useless, and will be invalid. As if one give land to his Son and his Heirs, or to A. and his Heirs, and his Son or A. is his Heir at Law, this is a void Devise, and the person to whom the land is given shall not take the land under the Will, but by Devises, being the better title, as if no Will had been made; for a Devise strengthens a title, taking away the entry of such as may possibly have right to the estate: But he who has an estate by Devise, is said by Law to be in by Purchase; a worse title than Devise. But if one by Will create an estate in his Heir, different from what
he would have taken by Law, there the Devise shall be good, the quality of the estate being altered, and it being indeed not the same estate as would have descended to him. Burn. Eccl. Law.

Those Devices are also void and rejected where the words of the Will are so general and uncertain that no meaning can be collected from them. And, therefore, where a man by Will gives "all to his Mother," these general words will not pass land to his Mother; for since the Heir at Law has a plain and unquestioned title, it would be unreasonable to set him aside, unless the intention of the T echator is evident from the Will; for that would be to set up and prefer a dark, and at best but a doubtful title, to a clear and certain one. Burn. Eccl. Law.

So, a Devise of real estate to the Heir of an Alien is void; because an Alien, according to the policy of the English Law, can have no Heir, either to inherit or to take by Purchase. See ante II. 1. and title Alien.

If a man devises land to another for ever, or in Fee-simple, or to him and his assigns for ever, or to him and his; in all these cases the Fee-simple passes by the Will: For it is evident, by the T echator's intention, that the Gift should continue beyond the life of the Devisee. So, if one devises land to another, to give, sell, or do what he pleases with them, these words, by the intent of the giver, convey the Fee-simple; as also a Devise to one and his Blood; because the Blood runs through every branch of a family. A Devise allo to a man and his Successors, carries a Fee; for by the word Successors is intended Heirs, the Heir succeeding to the Father. Burn. Eccl. Law. See Cowp. 352.

A Devise of all his estate (or estates) whatsoever, or all his effects; real and personal, comprehends all that a man has, land, money, goods, or other property whatever: Provided, in all cases, that the Will is duly executed, and attested by three Witnesses, as to pas land. And where there is a Surrender of the use of his Will, a Copy-held Estate will fall under the same Construction. See Comps. 299.

If lands are devised to Trustees for any particular purposes, without using the word Heirs, yet, by implication of Law, the Trustees must have an Estate of Inheritance sufficient to support such Trust: for there is no difference between a Devise to a man for ever, and to a man upon Trusts which may last for ever. 1 Eq. Abr. 176.

Where one devises land to another, on condition that the Devisee shall pay several sums of money in gross, and not paying out of the profits of the land; or shall release a debt due from the T echator; the Devisee, in this case, shall have a Fee-simple in the land, though all the sums of money together, which he is to pay, do not amount to a year's rent of the land; for the Devisee shall be intended for his benefit: And if he was to have the land for his life only, he might die before he could receive the amount of the Legacies out of the land, and consequently be a loser: And where there is a sum thus to be paid at once and immediately, there the person to whom the land is devised shall have the whole of it, though the sum is not the value of the land, or near it; the quantity of the sum thus to be paid in gross, not being material. But if a Devise were to A, paying so much, or such sums of money, out of the profits of the lands, there A would take but an estate for his life; for though he takes the land charged with payment of the money, yet he is to pay no faster than he receives, and so he can be no loser. 1 Eq. Ab. 166, 7.

It would be endless to multiply individual cases, as to the Construction of Wills, where the words have been held to give an Estate in Fee, in Tail, or for Life. A Devise of Land to A, B, without any further words, gives him only an Estate for Life.—The reason why the word "estate" has been held to pass a Fee, is, that this word (and which has been extended to the plural, Estates,) comprehends not only the land, or property that a man has, but also the Interest he has in it. The General Rule of Construction, that governs all uncertain cases, of which innumerable instances occur in the Books, seems to be, that "if there be no words of Limitation added, nor words of Perpetuity annexed to the Devise, so as to show the intention of the T echator, to convey the Inheritance to the Devisee, he can only take an Estate for Life." Comps. 299.—But "wherever there are words and expressions, either general or particular, or clauses in a Will, which the Court can lay hold of, to enlarge the estate of a Devisee, they will do so, to effectuate the intention of the T echator: But if the intention of the T echator is doubtful, the Rule of Law must take place." Comps. 352.

WIN, Sav.] In the beginning or ending of the names of places, signifies that some battle was fought, and victory gained there.

WINCHES, Cowp. A Kind of Engines to draw Barges against the stream of a river. Stat. 21 Jac. 1. c. 32.

WINCHESTER MEASURE, The Standard Measure originally kept at Winchester. See Measures; Weights.

WINDS, or WINDLASS, Cowp. A term for hunting of Deer in Forests to a Stand, &c. See Wanlafs.


WINDOW-TAX; See title Taxes.

WINE, Cowp. Is to be tried twice a year, viz. at Easter and Michaelmas; and none shall sell Wine but at a reasonable price. Stat. antiqu. 4 Ed. 3. cap. 22. The Lord Chancellor, by authority, set the prices of Wines by the Butt, Barrel, &c. Persons selling at greater prices shall forfeit 40l.; and no persons may sell Wine by retail, but such as are licensed by Justices of Peace, &c. Stat. 28 H. 8. cap. 14: 7 Ed. 6. cap. 5. Canary Wine, Alicante, and other Spanish or sweet Wines were not to be sold for above 1 r. 6 d. a quart, and Gascony and French Wine not above 8 d. the quart, &c. unless appointed at a higher price: And when the Lord Chancellor, Treasurer, &c. set the prices of all Wines, they were to cause them to be written, and Proclamation made thereof in the Chancery in term-time, or in the Cities, Towns, &c. where it was to be sold at those prices. Alto the number of Retailers of Wines, in every City and Market Town, was particularly limited. Stat. 7 Ed. 6. c. 5. 12 & 13 C. 2. c. 25.—The King was enabled to grant commissioins to Commissioners to license persons to retail Wine; and they might, under their seal of office, grant Licences, for any term not exceeding 21 years, under certain rents; &c. the revenue whereof to be paid into the Exchequer; but the privileges of the Universities, and of the Company of Vintners in London, &c. were
were saved by this statute, 12 Car. 2. c. 25. By this statute also (§ 11.) any Brewing or Adulteration of Wine is punished with the forfeiture of 100/. if done by the Wholesale Merchant, and 50/. if done by the Vintner or Retail Trader. One single act in selling by Retail. 2 Strange 718. But selling a dozen quart bottles of Wine is not selling by retail measure within the statutes, fo as to require a Licence. Ibid. 1124. Merchants, &c., selling Wines, who shall adulterate the same, or utter any adulterated Wine, are liable to a penalty of 300/.; stat. 12 C. 2. c. 25.

WINE-LICENCES, or the Rents payable to the Crown, by such persons as are licensed to sell Wine by Retail throughout England, herebefore, formed part of the Royal Revenue. These were first vested in the Crown by stat. 12 Car. 2. c. 25; and, together with the hereditary Excise, made up the equivalent in value for the loss sustained by the prerogative in the abolition of the Military Tenures, and the right of Pre-emption and Purveyance: but this revenue was abolished by Stat. 30 Geo. 2. c. 19, and an annual sum of upwards of 7000/. per annum, issuing out of the new Stamp-duties imposed on Wine Licences, was settled on the Crown in its stead. See further, titles King V. & Taxs.

See also titles Alcoholus Customs; Navigation Acts, &c.

WINTER-HEYNING. The season between the 11th day of November and the 25th day of April, which is excepted from the liberty of comming in the Porel of Dean, &c. Stat. 23 Car. 2. c. 3. See title Periel.

WIRE, of Iron or Gold or Silver, is one of the articles, the importation of and duties on which are regulated by the Navigation Acts, and other statutes; and is also liable to an Excise-duty on the manufacture, Stat. 27 Geo. 3. c. 13.

WIRE-DRAWERS. By stat. 9 & 10 W. 3. c. 39, Silver-Wire drawn, for making Gold and Silver Thread, shall contain certain quantities to the pound weight, on pair of 5½ for ounce wanting. By Stat. 15 Geo. 2. c. 29, the Silver Wire to be drawn for Silver Thread, is to hold eleven ounces and fifteen penny-weights; and all Silver to be gilt, and used in the Wire-Drawers' trade, shall hold eleven ounces and eight penny-weights of fine Silver on the pound weight sixty; and four penny-weights and four grains of Gold, to be paid upon each pound of Silver, on forfeiture of 15/. for every ounce made otherwise. In 18 Geo. 3. c. 71 by which Copper, Brass, and Metals, inferior to Silver, are directed to be spun on Thread, not on Silk; which Act also regulates making Copper-Wire, Lace, Spangles, &c. — Wire-Drawers are allowed to go annual Licences, paying a l. for the same. Stat. 24 Geo. 3. c. 47.

WISTA, A measure of Land among the Saxons; bring the quantity of Half a Hide; the Hide being 120 Acres. Abp. Aug. 1. 133.

WITAM, Secondaum Witam purum, Was for a person to purge himself by the oaths of many Witacles, as the oaths required. Leg. Eut. c. 63.

WITCHCRAFT; See Conjunction.

WITE, A Saxon word used for Punishment; a Pain, Penalty, Mule, &c. So Wite is a term of privilege or immunity from fines and amendements. Sax. Dict. Hence come the words Blackwicke, Lichewicke, &c.

WITENA-GEMOT, or WITENAGEMOT, Sax. Conventus Supellicium.] A Convention or Assembly of great men, to advise and afflict the King, answerable to our Parliament, in the time of the Saxons; or, rather an Assembly of the whole Nation. See title Dicts; Squire's Anglo-Saxon Grammar, 163. &c.; and this Dictionary, title Parliament.

WITENS, The Chief of the Saxons Lords or Thanes, their Nobles and wise men. Sax. Dict.


WITHERNAM, From the Sax. Witten, i.e. altera, or, as some say, contrax, & Nam, capis.] Where a Diffrefs is driven out of the County, and the Sheriff upon a Replevin cannot make deliverance to the party detained; in this case the Wit of Withernam is directed to the Sheriff, for the taking as many of his beasts or goods, who did thus unlawfully detain, into his keeping, till the party makes deliverance of the first Diffres, &c. It is therefore a taking or Replifal of all cattle or goods, in lieu of those that were formerly unjustly taken and elfoned, or otherwise withheld. F. N. B. 66, 69; 2 Inst. 140; Stat. Winstm. 2. 13 Ed. 1. c. 2. See title Replevin 1. & V.

This Wit is granted on the return of the Sheriff upon the Alias and Pluribus in Replevin, that the Cattle, &c., are elsoned, by reason whereof he cannot replcy them; and it appears by our books, that the Sheriff may award Withernam on Replevin fixed by plaint, if it be found by inquest in the county, that the Cattle were elsoned according to the Bailiff's return, &c. Though upon the Withernam awarded in the County Court, if the Bailiff doth return that the other party hath not any thing, there shall be an Alias and Pluribus, and so in infinitum, and no other remedy there. But on a Withernam returned in the King's Bench, or Common Pleas, if the Sheriff return that the party hath not any thing, &c., a Capias shall issue against him, and Exigent and Outlawry. New N. B. 166. In Replevin, &c., the Sheriff returns a vita longata font by the defendant; thereupon a Wit of Withernam is awarded; and if he return nisi, the plaintiff proceeds to Outlawry by Alias and Pluribus Capias in Withernam, and so to Exigent: There is some difference where the defendant appears upon the return of the Pluribus Capias, and when he stays longer, and appears on the return of the Exigent and not before; for in the first case his Cattle shall not be taken in Withernam but he must find pledges to make deliverance, or be committed; and, in the last case, he shall not only find pledges for making deliverance, but shall be fined, and his Cattle may be taken in Withernam. In both cases, the plaintiff may declare for the unjust taking, and yet continuing of his Cattle, and go to trial upon the right: and if it is found for him, then he shall recover the value of the Cattle, with costs and damages, or may have the Cattle again by a return habenda directed to the Sheriff; but if it be found for the defendant, he shall keep the Cattle, and have costs and damages for the unjust prosecution. 1 Brumld. 80.

A defendant in Replevin may have a Wit of Withernam against the plaintiff, as if the defendant hath a Return awarded for him, and he fuch a wit de return habenda, and the Sheriff return upon the Pluribus, good a vita longata font, he shall have nul lice against the pledges which the plaintiff put in to prosecute, &c.; and if they have nothing, then he shall have a Capias ad Withernam.
Wool.

Wool-Corn, A certain quantity of Grain paid by the Tenant of some Manors to the Lord, for the liberty to pick up dead or broken Wood. Cartular. Borri S. Petri MN. 142.

WOOD-GELD. The cutting of Wood within the Forest, or rather money paid for the same to the Foresters, or it signifies to be free from payment of money, for taking Wood in any Forest. Gramp. Juris. 157. Cf. Litt. 233.

WOODMEN. Seem to be those in Forests, that have their charge particularly to look to the King's Woods there. Gramp. Juris. 146. See title Forêt.

WOODMORE, The old name of that Court of the Forest which is now called the Court of Attachments, which was wont to be held at the will of the chief Officers of the Forest, without any certain time, till face the Statute of Charta de Forstis. Mulnwood, c. 22. p. 207. See title Forêt.

WOOD-Plea-Court, A Court held twice in the year in the Forest of Clun in Shropshire, for determining all matters of Wood and Agreements there.

WOODSTOCK. Wool and Yarn may be sold in Woodstock on market and fair days. Stat. 13 Edw. c. 21.

WOODWARD, An Officer of the Forest whose office confines in looking after the Woods, and Verin, and preventing offences relating to the same, &c. Woodwards may not walk with bow and shafts, but with Forest bills. Gramp. Juris. 201; Memorand. par. 1. 186. See title Forêt.

WOOL, Being a staple commodity of the greatest value in this kingdom; the employment of our Poor at home, and our most beneficial trade abroad, depending in a great measure upon it; divers good Laws have from time to time been made to preserve the same entirely to ourselves, and to prevent its being transported to other nations. An old Stat. of 27 Ed. 3., declared it a Felony to transport Wool: But the Felony was repealed by Stat. 7 Ed. 3. c. 6.; and see Stat. 11 Ed. 3. c. 1. The Stat. 8 Edw. c. 3., prohibited the transportation of Livestock on severe penalties. By Stat. 12 Car. 2. c. 30, any person exporting any Wool, Yarn, Sheep, or fullers' Earth, was to forfeit the same; and for every pound weight of goods. And the owners of the ship in which it was transported, being privy to the offence, were to forfeit all their interest of the said ship; also the master and mariners affiling, all their goods; and any persons might seize such Wool, and should be entitled to one moiety, and the King to the other moiety of forfeitures, &c. The Stat. 13 & 14 Car. 2. c. 15, made the transportation of Wool Felony again; though this being thought too severe, Stat. 7 & 8 W. 3. c. 9, a second time repealed the Felony, and ordained that exporting Wool beyond Sea should incur a forfeiture of the vessel, and treble value; and persons aiding and affilling, to suffer three years' imprisonment.

By Stat. 9 & 10 W. 3. c. 40, the former laws were explained, and a further provision made against transporting Wool, by obliging entries to be made of Wool thorn, and Wool not to be carried near the Sea-coasts, but between sun-rising and sun-setting, &c.—Unlawful exporters of Wool, where judgment was obtained against
WOOL.

Regulations for the payment of Wages, Stat. 30 Geo. 2. c. 12. Punishment of End-gatherers, 13 Geo. 1. c. 23. § 8. Having in custody Cloth stolen from the rack, or Wool left to dry, shall be punished as required by statute, to avoid deceits by tearing in locks of refuse Wool, and Thrumbs, to gain weight: They shall be sworn to perform this office truly, between the Owner and the Wool-buyer or Merchant. Persons winding and selling deceitful Wool, shall forfeit for every bundle, after it is cleared, as required by statute, to avoid deceits by tearing in locks of refuse Wool, and Thrumbs, to gain weight: They shall be sworn to perform this office truly, between the Owner and the Wool-buyer or Merchant.


WOOLWINDERS, Those who wind up every Fleece of Wool, intended to be packed and sold by weight, into a kind of bundle, after it is cleared, as required by statute, to avoid deceits by tearing in locks of refuse Wool, and Thrumbs, to gain weight: They shall be sworn to perform this office truly, between the Owner and the Wool-buyer or Merchant. Persons winding and selling deceitful Wool, shall forfeit for every fleece 6d. And if Wool-packers do not make good and due packing, without putting any locks, Pelt Wool, sand, earth, dirt, &c. in fleeces, Action of Trepass and Deceit lies against them, &c. Stat. 8 H. 6. c. 23; 23 H. 8. c. 17.

WORCESTERS, and Worsted Cloths, Are mentioned in many of our old statutes, as stat. 17 R. 2: 7 E. 2: 14 & 15 Hen. 8. c. 3 &c.

WORDS, Which may be taken or interpreted by Law in a general or common sense, ought not to receive a strained or unusual construction: Ambiguous Words are to be construed so as to make them stand with Law and Equity, and not to be wrested to do wrong. A Latin Word in pleading, which signifies diverse things, was well used to express that thing intended to be expressed by it: Uncertain Words in a Declaration, are made good and certain, by a Plea in Bar, where notice is taken of the meaning of them; and Words which are in themselves uncertain, may be made certain by subsequent or following Words. The different phrasing of the same Words may cause them to have a different sense and construction: A Word which is written short, or abbreviated, is not good without a dash to distinguish it: Seneile Words are void and idle, though they shall not hurt where the sense is good without them. Nor shall Words in Deeds that are needful, impeach a clause certain and perfect without such Words. 2 Litt. 114; 115; 116; 313: Hob. 313.

The following general rules and maxims are stated by Blackstone, as having been laid down by the Courts of Justice, for the construction and exposition of the several species of Common Assurances or Conveyances, whereby a title to lands and tenements may be transferred and conveyed from one man to another. 2 Comm. c. 23.

1. That the construction be favourable, and as near the minds and apparent intents of the parties, as the rules of Law will admit. For the maxims of Law are, that verba intentionem debent inveniri; and bene interpreting chariam prorsus simplicitatem iuricam. And therefore the construction must also be reasonable, and agreeable to common understanding. And. 60 : 1 Bull. 175: Hob. 305.

2. That queres in verbis nulla est ambiguitas, ibi nulla essentia contra verba firmata est: but that, where the intention is clear, too minute a frenzy be not laid on the
WORDS.

the strict and precise signification of Words; nam qua brevis in litera, brevis in indicio. 2 Saur. 137. Therefore, by a grant of a remainder a reversion may well pass, and be converted. Hob. 27. And another maxim of Law is, that malum grammaticum non est variam chartam; neither false English nor bad Latin will destroy a Deed. Which perhaps (says Blackstone) a classical critic may think to be unnecessary caution. See 10 Rep. 133:

1. Inf. 225. 2 Show. 134.

3. That the construction be made upon the entire deed, and not merely upon disjointed parts of it. Nam ex antecedentibus at sequentibus fit optima interpretation. 1 Shot. 101. And therefore that every part of it be (if possible) made to take effect; and no Word but what may operate in some shape or other. 1 P. Wm. 47. Num verba debent intelligi cum effectu, ut res magis evident quam praest.

Blew 136.

4. That the Deed be taken most strongly against him that is the Agent or Contractor, and in favour of the other party; Verba foris accusantur contra praeteritum. As, if Tenant in Fee simple grants to any one an estate for life; generally, it shall be construed an estate for the life of the Grantor. 1 Inf. 42. For the principle of self-preservation will make men sufficiently careful, not to prejudice their own interest by the too extensive meaning of their Words; and hereby all manner of deceit in any grant is avoided; for men would always affect ambiguous and intricate expressions, provided they were afterwards at liberty to put their own construction upon them. But here a distinction must be taken between an Indenture and a Deed-poll: for the Words of an Indenture, executed by both parties, are to be considered as the Words of them both; for, though delivered as the Words of one party, yet they are not his Words only, because the other party hath given his consent to every one of them. But in a Deed-poll, executed only by the Grantor, they are the Words of the Grantor only, and shall be taken most strongly against him. 1 Inf. 134. And, in general, this rule, being a rule of some fineness and rigour, is the last to be reforted to; and is never to be relied upon, but where all other rules of exposition fail. Bac. Elem. c. 3.

5. That, if the Words will bear two senses, one agreeable to, and another against, Law; that sense be preferred, which is most agreeable thereto. As if Tenant in Tail lets a lease to have and to hold during life generally, it shall be construed to be a lease for his own life only, for that stands with the Law; and not for the life of the Lessee, which is beyond his power to grant.

1 Inf. 42.

6. That in a Deed, if there be two clausulae fo totally repugnant to each other, that they cannot stand together, the first shall be received, and the latter rejected; contrary to the general rule as to the expression of Wills: yet in both cases we should rather attempt to reconcile them. Hardr. 94; Cro Eliz. 420; 1 Vern. 30.

See further, titles Consequences; Deeds; Statutes; Wills, &c.

As to Words Defamatory that are actionable, see title Action. And criminal, making Libel and High Treason, see titles Libel; Treason.

WORKHOUSES: See this Dict. titles Police; Poor Transportation.

WRECK.

WORMTAK. Item pta ibidem, apud, sec. de Wombat, et fit in aliqua, alium, atque ad Feum S. Martini. Inquit: 'Hic, 2 Rer. 2.

WORT, or WORT. H. From Sax. Wortb.] A Curtailage, or country farm. Matt. Ws. 870.

WORTHIE OF BLOOD, An expression of the Lawyers, signifying the presence given in Duckets, to sons before daughters. See title Duckets.

WORTHINE OF LAND, A certain quantity of land, to be called in the manor of King's-land in the county of Hereford: And in some places the tenants are called Worthies. Confessit. Manu. de Hedenham in Corg. 18 Edw. 3.

WRECK, Lat. Wreckum Mariis, Fr. Wreck de Mer, sometimes writ Wrecks, Wrec, & Scup, super, quant Scaup. neer. i.e. Ejus Mariis. Such goods as, after a ship-wreck, are cast upon the land by the sea, and left there, within some country; for they are not Wrecks so long as they remain at sea, in the jurisdiction of the Admiralty. 2 Inf. 167. Where a ship perisheth on the sea, and no man escapes alive out of it, this is called Wreck. And the goods in the ship being brought to land by the waves, belong to the King by his prerogative, or to the Lord of the manor. 5 Rep. 106. By the Common Law all Wrecks belonged to the Crown; and therefore they are not chargeable with any customs, and for such goods coming into the kingdom by Wreck, are not imported by any body, but cast ashore by the wind and sea. But it was usual to seize Wrecks to the King's use, only when no Owner could be found; and in that case the property being in no man, it of course belongs to the King, as Lord of the Narrow Seas, &c. Brac. lib. 2. c. 15.

The profits arising from Shipwrecks are claimed by Blackstone, among the articles of the King's ancient ordinary revenue. These are declared to be the King's property by the prerogative statute, 17 Ed. 2. 17. 11, and were fo long, before, at the Common Law.

It is worthy observation, how greatly the Law of Wrecks has been altered, and the rigour of it gradually softened in favour of the distressed proprietors. Wreck, by the ancient Common Law, was where any Ship was lost at Sea, and the goods or cargo were thrown upon the land; in which case these goods, so wrecked, were adjudged to belong to the King: for it was held, that, by the loss of the Ship, all property was gone out of the original Owner. Deed. & Stat. D. 2. c. 51. But this was undoubtedly adding sorrow to sorrow, and was con-}quent neither to reason nor humanity. Wherefore it was first ordained by King Henry I., that if any person escaped alive out of the Ship, it should be no Wreck; and afterwards, King Henry II., by his charter, declared, that if on the coasts of either England, Poitou, Olerno, or Gascony, any Ship should be dilated, and either man or beast should escape or be found therein alive, the goods should remain to the Owners, if they claimed them within three months; but otherwise should be esteemed a Wreck, and should belong to the King, or other Lord of the franchize. This was again confirmed with improvements by King Richard I., who, in the second year of his reign, not only established these concessions, by ordaining that the Owner, if he was shipwrecked and escaped, omnes se suos liberam et guitas habere, but also, that, if he perished, his children or, in default of them,
WRECK.

his brethren and fitters, should retain the property; and, in default of brother or fitter, then the goods should remain to the King. And the Law, as laid down by Bracten in the reign of Henry III., seems still to have improved in its equity. For then, if not only a dog (for instance) escaped, by which the owner might be discovered, but if any certain mark were set on the goods, by which they might be known again, it was held to be no Wreck. Bract. I. 3, c. 3. And this is certainly most agreeable to reason; the rational claim of the King being only founded upon this, that the true owner cannot be ascertained. Afterwards, in the statute Westminster 1; 3 Ed. I. c. 4, the time of limitation of claims, given by the charter of Henry II., is extended to a year and a day, according to the usage of Normandy; and it enacted, that if a man, a dog, or a cat, escape alive, the vessel shall not be adjudged a Wreck. These animals are only put for examples; for it is now held, that not only if any live thing escape, but if proof can be made of the property of any of the goods or lading which come to shore, they shall not be forfeited as Wreck. The statute further ordains, that the Sheriff of the county shall be bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of woman, they shall be returned to him without delay; but if no such property be proved within that time, they then shall be the King's. 2 H. 6, c. 108. If the goods are of a perishable nature, the Sheriff may sell them, and the money shall be liable in their stead. P. 4. 4. 6. This revenue of Wrecks is frequently granted out to Lords of manors, as a royal franchise; but if any one be thus entitled to Wrecks in his own land, and the King's goods are wrecked thereon, the King may claim them at any time, even after the year and day. 2 H. 6, c. 108.

In order to constitute a legal Wreck, the goods must come to land. If they continue at Sea, the Law distinguishes them by the barbarous and uncouth appellations of jefam, flotam, and ligan. Jefam is, where goods are cast into the Sea, and there sink and remain under water; flotam is, where they continue floating or swimming on the surface of the waves; ligan, or Lagan, is, where they are sunk in the Sea, but tied to a rock or buoy, in order to be found again. 5 Rep. 106. These are also the King's, if no owner appears to claim them; but, if any Owner appears, he is entitled to recover the possession. For even if they be cast overboard, without any mark or buoy, in order to lighten the Ship, the Owner is not by this act of necessity continued to have renounced his property; much less can things ligan be supposed to be abandoned, since the Owner has done all in his power to avert and retain his property. These three are therefore accounted so far a distinct thing from the former, that by the King's grant to a man of Wrecks, things jefam, flotam, and ligan will not pass. 5 Rep. 108. See title Jefam, &c.

Wrecks, in their legal acceptation, are at present not very frequent: for, if any goods come to land, it rarely happens, since the improvement of Commerce, Navigation, and Correspondence, that the Owner is not able to assert his property within the year and day limited by Law. And in order to preserve this property entire for him, and to prevent Wrecks at all, our Laws have made many very humane regulations. By stat. 27 Edw. 3. c. 13, if any Ship be lost on the shore, and the goods come to land, (which cannot, says the Statute, be called Wreck,) they shall be presently delivered to the merchants paying only a reasonable reward to those that saved and preferred them, which is called Salvage. See title Inference 6. — Also, by the Common Law, if any persons (other than the Sheriff) take any goods cast on shore, which are not legal Wreck, the Owners might have a commissiion to inquire and find them out, and compel them to make restitution. F. N. B. 112. And by stat. 12 Ann. 12. c. 8, confirmed by stat. 4 Geo. 1. c. 12, in order to affist the distressed, and prevent the scandalous illegal practices on some of our Sea-coasts, it is enacted, that all officers and others of towns or near the Sea shall, upon application made to them, summon as many hands as are necessary, and send them to the relief of any Ship in distress, on forfeiture of 100l, and in case of assistance given, Salvage shall be paid by the Owners, to be assisted by three neighbouring Justices. All persons that recollect any goods shall forfeit their treble value; and if they wilfully do any act whereby the Ship is lost or destroyed, by making holes in her, destroying her pumps, or otherwise, they are guilty of Felony, without benefit of clergy. Lastly, by stat. 26 Geo. 2. c. 19, plundering any Vessel either in distress, or wrecked, and whether any living creature be on board, or not. (for, whether Wreck or otherwise, it is clearly not the property of the populace,) or preventing the escape of any person that endeavours to save his life, or wounding him with intent to destroy him, or putting out false lights in order to bring any Vessel into danger, are all declared to be capital Felonies; in like manner as the destroying of trees, sleepers, or other stated sea-marks, is punished by stat. 8 Eliz. 13, with a forfeiture of 100l. or Outlawry. Moreover, by the said statute of 26 Geo. 2, pillaging any goods cast ashore is declared to be Petty Larceny; and many other salutary regulations are made for the more effectually preserving Ships, of any nation, in distress. 1 Comm. c. 8.

The year and day, in the statute Westminster 1, shall be accounted from the seizure; and if the Owner of the goods die within the year, his executors or administrators may make proof. 2 H. 6, c. 107; 5 Rep. 106. If a man have a grant of Wreck, and goods are wrecked upon his lands, and another taketh them away before seizure; and if the Goods be lost on the shore, the King being only founded upon this, that the true Owner cannot be ascertained, then the statute Westminster 1, shall be accounted from the seizure. 1 H. 6, c. 8. If goods wrecked are seiz'd by persons having no authority, the Owner may have his action against them; or if the wrong-doers are unknown, he may have a commissiion to inquire, &c. 2 H. 6, c. 106. Goods lost by Tempe, or Piracy, &c. and not by Wreck, if they afterwards come to land, shall be restored to the Owner. Stat. 27 Edw. 3. f. 2. c. 13. Where a Ship is ready to sink, and all the men therein, for the preservation of their lives, quit the Ship, and afterwards the perils of any of the men are saved and come to land, the goods are not lost. A Ship on the Sea was carried out of the way by an enemy, the men, for the security of their lives, forsook the Ship, which was taken by the enemy, and spoiled of her goods and tackle, and then turned to sea; after this by distress of weather she was cast on land, where it happened.
happened her men safely arrived; and it was resolved, that this was no Wreck. 2 Inst. 167. See further, titles Navy; Pilots, &c.

WRECKFREE, Is to be exempt from the forfeiture of shipwrecked goods and vessels; which King Edw. I. by charter granted to the Barons of the Cinque Ports. Placit. temp. Edw. I.

WRIT.

Brev. from Sixt. Writs, i.e. Ser. Heret.] In general is the King's Precept, in writing under seal, issuing out of some Court, to the Sheriff, or other person, and commanding something to be done touching a suit or action, or giving commission to have it done. Terms de Ley: 1 Inst. 73. Also a Writ is said to be a formal letter of the King's, in parchment sealed with a seal, directed to some Judge, Officer, or Minister, &c. at the suit or plaint of a subject, requiring to have a thing done, for the cause briefly expressed, which is to be discussed in the proper Court, according to Law. Old Nat. Br. 4; Steph. Abr. 245. Of Writs there are divers kinds, in many respects; some Writs are grounded on Rights of Action, and some in nature of Commissions; some mandatory and extra-judicial, and others remedial; some are patent or open; some close or sealed up; some Writs issue at the suit of parties; some are of office; some ordinary; and others of privilege; some Writs are directed to the Sheriffs, and in special cases to the party, &c. 1 Inst. 289; 2 Inst. 391; 7 Rep. 20.

The Writs in Civil Actions are either original or judicial: Original Writs are issued out in the Court of Chancery, for the summoning a defendant to appear, and are granted before the suit is begun, to begin the same; and Judicial Writs issue out of the Court where the original is returned, after the suit is begun: The Originals bear date in the name of the King; but Judicial Writs bear date in the name of the Chief Justice. See titles Original; Procefs; Latiat; Captivus, &c. A Writ without a date is not good, for the matter may be taken out, and it is proved by the date; and if it be out of the Common Law Courts, it must bear date some day in term (not being Sunday); but in Chancery, Writs may be issued in Vacation as well as Term-time, as that Court is always open. F. N. B. 51, 147; 2 Inst. 40; Lawr. 337; See Stat. 13 Car. 2. 6. 2.

Writs in Actions are likewise civil, concerning the possession of land, called Writs of Entry, or of Right, touching the property, &c. personal, relating to goods, chattels, and personal injuries; and mixed, for the recovery of the thing, and damages. 2 Inst. 39. Writs may be jeffyfory, of a man's own possession; or accepted, of the feud and possession of his Ancestor: There are also certain Writs of Prevention or Anticipation; and of Ratification, &c. The most common Writs in daily use, are in Debt, Detinue, Trespass, Action upon the Cafe, Accompit, and Covenant, &c. which with others must be rightly directed, or they will be naught. F. N. B.: Style 42, 237. In all Writs care is to be taken, that they be laid and formed according to the cause or ground of them, and so pursued in the process thereof: Though the Writ in some cases may be general; and the Count or Declaration special. Heb. 18, 84, 271.

WRIT OF ASSISTANCE, A Writ issuing out of the Exchequer to authorize any person to take a Contable, or other public officer, to seize goods or merchandise prohibited and uncustomed, &c. There is also a Writ of this name issued out of the Chancery, to give possession of land. Stat. 14, Car. 2. c. 1.

WRIT OF DELIVERY, In what cases grantable, Stat. 13 & 14 Car. 2. c. 11. § 30.

WRIT OF ENTRY; See title Entry.

WRIT OF INQUIRY OF DAMAGES, A judicial Writ, that issues out to the Sheriff upon a judgment by Default, in Action, of the Cafe, Covenant, Trespass, Trover, &c. commanding him to summon a Jury to inquire what Damages the plaintiff hath sustained since the promissorium. See title Judgment. 1. Tidie 314.

The Writ of Inquiry should be returnable on a general return, or day certain, according to the nature of the proceedings: if by Original, on a general return; if by Bill, on a day certain. But where, in an Action by Bill against an Attorney, the Writ of Inquiry was returnable on a general return, it was held not to be error: but only a miscontinuance, and cured by the Statutes of Jogftalls. 2 Stat. 947; Sab. Rep. 245.

A Writ of Inquiry of Damages is a mere Inquest of Office, to inform the conscience of the Court; who, if they please, may themselves affect the Damages. And it is accordingly the practice, in Actions upon Promissory Notes and Bills of Exchange, instead of executing a Writ of Inquiry, to apply to the Court for a rule to hear cause, why it should not be referred to the Master to see what is due for principal and interest, and why the decision should not be signed for that sum, without executing a Writ of Inquiry; which rule is made absolute, on an affidavit of service, unless good cause be shown for the contrary. Tidie's Pract. K. B.—This practice, however, is confined to Actions upon Promissory Notes and Bills of Exchange, where the quantum of Damages depends on figures, which may be as well ascertained by the Master as before a Jury; and therefore where the defendant had suffered judgment by default, in an Action of Assumpsit, on a foreign Judgment, the Court refused to make the rule absolute, for a reference to the Master; laying, this was an attempt to carry the rule further than had yet been done, and as there was no instance of the kind, they would not make a precedent for it. 4 Term Rep. 497. The Court has also refused to make the rule absolute, in an Action upon a Bill of Exchange, for foreign money; the value of which is uncertain, and can only be ascertained by a Jury. 5 Term Rep. 87. See Case Hist. 536; Cro. Jac. 617.

Where the Jury, upon the trial of an Issue, omit to affect the Damages, the omission may, in some cases, be supplied by a Writ of Inquiry. As to which it seems, that where the matter, omitted to be inspected by the principal Jury, is such as goes to the very point of the Issue, and upon which, if it be found by the Jury, an Attaint will lie against them, by the party, if they have given a false verdict; there, such matter cannot be supplied by a Writ of Inquiry, because thereby the plaintiff may lose his Action of Attaint, which will not lie upon an Inquest of Office. Tidie's Pract. 4.

Thus where, in Detinue, the Jury omitted to affect the value of the goods, the Court refused to supply the omission by a Writ of Inquiry. And so where the Jury, who try the Issue in Replevin, (see that title,) omit to inquire of the rent in arrear, and value of the castle, pursuant
pursuant to the statute 17 C. 2. c. 7, no Writ of Inquiry can be afterwards awarded, to supply the omission: for, by the words of the statute, these matters are to be inquired of, by the same Jury who try the issue. Tidd's Prac. 27. and the authorities there cited.

But where the matter, omitted to be inquired of by the principal Jury, doth not go to the point in issue, or necessary consequence thereof, but is merely collateral, as the four usual Inquiries on a square impediment, there, such matter may be supplied by a Writ of Inquiry, without any damage to the party; because, if the same had been inquired of by the principal Jury, it would have been as to those particulars, no more than an Inquest of Office, upon which an Attaint will not lie. Carlb. 362.

Thus, when parties being at issue in an action, a demurrer was joined upon the evidence, to discharge the Jury, without further inquiry, it is necessary to enter a special writ: and the most usual course is, when there is a demurrer was joined upon the evidence, to discharge the Jury, without further inquiry. Carlb. 143.

So, in Trespass or Replevin, against Overseers of the Poor, acting without process, if the plaintiff be nonsuit, or have a verdict against him, and the Jury be discharged, without inquiring of the Treble Damages, afterwards judgment was given for the plaintiff, and a Writ of Inquiry of Damages awarded; the Court held, that though the same Jury might have ascertained the Damages conditionally, yet it may be as well done by a Writ of Inquiry of Damages, when the demurrer is determined; and the most usual course is, when there is a demurrer upon evidence, to discharge the Jury, without further Inquiry. Carlb. 143.

The Writ of Inquiry may be executed, on due notice, before the Sheriff or his Deputy; or, by leave of the Court, under special circumstances, before the Chief Justice, or a Judge of Affize, as an Affiant to the Sheriff. And where the Writ of Inquiry is executed before the Chief Justice, or a Judge of Affize, it is usual to move the Court, for the Sheriff to return a good Jury. But unless some matter of Law is likely to arise in the course of the Inquiry, the Court will not give leave to have it executed before a Judge, merely on account of the importance of the facts. Tidd's Prac.

The Notice of Inquiry should be in Writing; and if the defendant have appeared, and his Attorney be known, it should be delivered to such Attorney: But if the defendant have not appeared, or his Attorney be unknown, the Notice should be delivered to the defendant himself, or left at his last place of abode. If the Venue be laid in London or Middlesex, and the defendant live within forty computed miles from London, there must be eight days' Notice of Inquiry, exclusive of the day it is given; which Notice is also sufficient in County Causes: for the Stat. 14 Geo. 2. c. 17. § 4, which requires ten days' Notice of Trial at the Affize, does not extend to Notices of Inquiry. But where the Venue is laid in London or Middlesex, and the defendant lives above forty computed miles from London, there must be fourteen days' Notice of Inquiry. And Sunday is to be accounted a day in these Notices, unless it be the day on which the Notice is given. Short Notice of Inquiry is the same as short Notice of Trial: and where a Term's Notice of Trial is required, there must, at the same distance of time, be the like Notice of Inquiry. Tidd's Prac. See title Trial.

Where the Inquiry is to be executed before the Chief Justice, or a Judge of Affize, the Notice should be given for the Sittings, or Affize, generally; but otherwise the Notice should express the particular time and place of executing it. A Writ of Inquiry may be executed, in point of time, on the day it is returnable, but not on a Sunday; and where the Notice was to be executed by ten o'clock, the Court set it aside for uncertainty. The usual way is to give notice that the Inquiry will be executed, between two certain hours; as between ten and twelve o'clock in the forenoon, or between four and six in the afternoon, of a particular day, on or before the return of the Writ. On a Notice of Inquiry so given, the party is not tied down to the precise time fixed by the Notice: for the Sheriff may have prior business, which may delay him beyond it. Tidd's Prac.

With regard to the place of executing an Inquiry, it must be executed within the county where the action is laid, and the Notice should be given accordingly. Notice of Inquiry may be continued or countermanded, in like manner as Notice of Trial. Tidd's Prac.

In London or Middlesex, the Writ must be left at the Sheriff's Office the day before the time appointed for its execution. And if either party propose to attend by Counsel, he should give Notice thereof to his adversary, or he will not be allowed for it in costs. The execution of the Writ may be adjourned by the Sheriff, after it is entered upon. And if the plaintiff do not proceed to execute the Inquiry according to Notice, or countermand in time, the defendant, on an affidavit of attendance and necessary expenses, shall have his costs, to be taxed by the Master. Tidd's Prac.

Letting judgment go by default is an admission of the cause of action: and therefore, where the action is founded on a Contract, the defendant cannot give in evidence on a Writ of Inquiry, that it was fraudulent. So, in an Action on a Promissory Note or Bill of Exchange, the Note or Bill need not be proved, though it must be produced before the Jury, in order to see whether any money appears to have been paid upon it. And where an Action was brought on a Policy of Assurance, on a Foreign Ship, wherein there was a stipulation, that the policy should be deemed sufficient proof of interest; the plaintiff, on the Writ of Inquiry, was only bound to prove the defendant's subscription to the policy without giving any evidence of interest. Tidd's Prac.

On the return of the Inquiry, the plaintiff should give a rule for judgment, with the Clerk of the Rules, which expires in four days. And, in the meantime, the defendant may move to set aside the Inquisition, for want of due Notice; or on account of an objection to the Jury, or mode of returning them, or that some of the Jury are debtors, taken out of prison for the purpose of attending, or that they were returned by the plaintiff's Attorney; or for excessive Damages. The plaintiff, in like manner, may move to set aside the Inquisition, when it is obvious the Damages are too small: except in vindictive, hard, or trifling actions. On the expiration of the rule for judgment, the Sheriff, being called upon, 

for
WRIT OF RIGHT.

Brevi de Recto.] The great and final remedy for him that is injured by Outlaw, or Privation of his Possession. See Rectio; Right.

By the several poe郿ory remedies given by our Law, (see titles Entry, Affract) the Right of Possession may be restored to him that is unjustly deprived thereof. But the Right of Possession (though it carries with it a strong presumption) is not always conclusive evidence of the Right of Property, which may still subsist in another man. For as one man may have the Possession, and another the Right of Possession, which is recovered by Poefsory Actions; so one man may have the Right of Possession, and thus not be liable to eviction by any Poefsory Action, and another may have the Right of Property, which cannot be otherwise affected than by the great and final Remedy of a Writ of Right, or such correspondent Writs as are in the nature of a Writ of Right. 3 Com. c. 10. See Title.

This happens principally in four cases: 1. Upon Discontinuance by the Alienation of Tenants in Tail: whereby, who had the Right of Possession, hath transferred it to the Alienee; and therefore his issue, or those in remainder or reversion, shall not be allowed to recover by virtue of that Possession, which the Tenant hath so voluntarily transferred. 2, 3. In case of judgment given against either party, whether by his own default, or upon trial of the merits, in any Poefsory Action: for such judgment, if obtained by him who hath not the true ownership, is held to be a species of Deference; which however binds the Right of Possession, and sufferers it not to be ever again disputed, unless the Right of Property be also proved. 4. In case the Demandant, who claims the Right, is barred from these Poefsory Actions by length of time and the Statute of Limitations. See title Limitation of Actions. In these four cases the Law applies the remedial instrument of either the Writ of Right itself, or such other Writs as are said to be of the same nature.

1. And first, upon an Alienation by Tenant in Tail, whereby the estate-tail is discontinued, and the remainder or reversion is, by failure of the particular estate, displaced, and turned into a mere Right, the remedy is by Action of Formeros, (secundum formatam doni,) which is in the nature of a Writ of Right, and is the highest action that Tenant in Tail can have. See this Dictionary, title Formeros.

2. In the second case; if the Owners of a particular estate, as for Life, in Dower, by the Custom, or in Fee-tail, are barred of the Right of Possession by a Recovery had against them, through their default or non-appearance in a Poefsory Action, they were absolutely without any remedy at the Common Law, as a Writ of Right does not lie for any but such as claim to be Tenants of the Fee-simple. Therefore the Stat. Wm. 25. 18 Edw. c. 49 gives a new Writ for such persons, after their lands have been so recovered against them by default, called a Quod et defercere; which, though not strictly a Writ of Right, so far partakes of the nature of one, as that it will restore the Right to him who has been thus unlawfully deforced by his own default. F. N. B. 155. But in the Recovery were not had by his own default, but upon defence in the inferior Poefsory Action, this still remains final with regard to those particular estates, as at the Common Law: And hence it is, that a Common Recovery (on a Writ of Entry in the pgd) had, not by default of the Tenant himself, but (after his defence made and voucher of a third person to warranty) by default of such Vouchee, is now the usual bar to cut off an estate-tail. See this Dictionary, title Recovery.

3, 4. Thirdly, in case the Right of Possession be barred by a Recovery upon the merits in a Poefsory Action, or lastly, by the Statute of Limitations, a claimant in Fee-simple may have a mere Writ of Rights; which is in its nature the highest Writ in the Law, and lies only of an estate in Fee-simple, and not for him who hath a fee tail. F. N. B. 1. This Writ lies concurrently with all other real actions, in which an estate of fee-simple may be recovered; and it also lies after them, being as it were an appeal to the mere Right, when judgment hath been had as to the Possession in an inferior Poefsory Action. F. N. B. 155. But though a Writ of Right may be brought, where the Demandant is entitled to the Possession, yet it rarely is advisable to be brought in such cases; as a more expeditious and easy remedy is had, without meddling with the property, by proving the Demandant's own, or his Ancestor's Possession, and their illegal Outlaw, in one of the Poefsory Actions. But in case the Right of Possession be lost by length of time, or by judgment against the true Owner in one of these inferior suits, there is no other choice; this is then the only remedy that can be had; and it is of so forcible a nature, that it overcomes all obstacles, and clears all obstructions that may have arisen to cloud and obscure the title. And, after issue once joined in a Writ of Right, the judgment is absolutely final; so that a Recovery had in this action may be pleaded in bar of any other claim or demand. F. N. B. 6: 1 Inf. 158.

The pure, proper, or mere Writ of Right lies only, we have seen, to recover Lands in Fee-simple, unjustly withheld from the true Proprietor. But there are also some other Writs which are said to be in the nature of a Writ of Right, because their processes and proceedings do mostly (though not entirely) agree with the Writ of Right; but in some of them the Fee-simple is not demanded; and in others not Land, but some incorporeal Hereditament. Nor is the mere Writ of Right alone, or always, applicable to every case of a claim of Lands in Fee-simple; for if the Lord's Tenant in Fee-simple dies without heir, whereby an Elcheat accrues, the Lord shall have a Writ of Elcheat, which is in the nature of a Writ.
WRIT.

A Writ of Right. Booth 135: F. N. B. 9. And if one of two or more Coparceners deferces the other, by usurping the sole Possession, the party aggrieved shall have a Writ of Right, de ratione parte: which may be grounded on the Seisin of the Seantor at any time during his life; whereas, in a supers obit, (which is a poifeffory remedy,) he must be seised at the time of his death. F. N. B. 9.

The General Writ of Right ought to be first brought in the Court-Baron of the Lord of whom the lands are holden; and then it is open, or patent: But if he holds no Court, or hath waived his Right, refertis Cauriam, it may be brought in the King's Courts by Writ of Prteipe originally; and then it is a Writ of Right Clofe, being directed to the Sheriff, and not to the Lord.

Prt'uipe Clofe, being his Writ of Right is called a Writ of Prtecipe quia abmores petit, in the King's Court, is moved into the County-Court by Writ of Right Patent itself may be brought in the King's Courts or hath waived his Right, the Demandant and averring that he has more Right to hold his Ants Right, and averring that he has more Right to hold this Right of the Tenant being fhewn, it then puts the tenant upon the proof of his title: in which, if he fails, or if the Tenant hath feen a better, the Demandant and his Heirs are perpetually barred of their claim; but if he can make it appear that his Right is superior to the Tenant's, he shall recover the land against the Tenant and his Heirs for ever. But even this Writ of Right, however superior to any other, cannot be sued out at any distance of time. For by the ancient Law no Seisin could be alleged by the Demandant, but from the time of Hen. I.—By the statute of Merton, 20 Hen. 3, c. 8, from the time of Hen. II.; by the statute of Wifom. 1, 3 Edw. 1, c. 39, from the time of Rich. I.; and now, by statute 32 Hen. 8, c. 2, Seisin in a Writ of Right shall be within 60 years. So that the Possession of lands in fee-simple uninterruptedly, for three centuries, is at present a fufficient Title against all the world; and cannot be impeached by any dormant claim whatsoever. 3 Comm. c. 10. See titles Limitations of Actions II. 1.; Poffefion; Title.

WRIT OF RIGHT OF ADAVSON; See this Dict. titles Advowson III.; Quare Impedit.

WRIT OF RIGHT OF DOWER; See title Dower.

WRIT OF RIGHT OF WARD; See title Guardian.

WRIT OF RIGHT SUR DISCLAIMER; See titles Ciffant; Disclaimer.

WRITER OF TALLIES, Scrip tor Talliarum.) An Officer in the Exchequer, being Clerk to the Auditor of the Receipt, who wrote upon the Tallies the whole letters of the Teller's bills. Cowell. See title Exchequer.

WRITING, Scriptum.] A simple Writing or Declaration, not in the manner of a Deed, made to a perfon, or to the world; and not to the Lord. WYTE, Wyke.

WRONGLANDS, Sempinham.—Concede ut omnima monasteria & ecclesiarum regas ma a publicis vectigalibus, eque ribus & omnibus abhucantur.—Ne mancipia praebant regi vel principibus, nef voluntaria. Spelm. Glof. Nulla

X.

XANTUS, Is used for Sanctus. See Spelm.

XENIA, Dicuntur multa, quae a provinciis \textit{re}teribus provinciarum exhibantur: Vox of in provinciis, chartis non inficiat; ubi quietus eft a Xenis immunis notis ab bajjus etin materibus alius dominis, rigi vel regimen praebant, quando ipsi per praxiss provinciarum transfertur. Chart. Dom. Semplingham.—Concede ut omnia monasteria & ecclesiarum regas ma a publicis vectigalibus, eque ribus & omnibus abhucantur.—Ne mancipia praebant regi vel principibus, nef voluntaria. Spelm. Glof. Nulla

autem persona, parva vel magna, ab hominibus & terra Radingensibus non-aesterti exigant, non equitatem esse expeditum, non famagia, non cotidiana, non navigia, non opera, non tributia, non Zenia, &c. Mem. Scis. Aen. 30 Edw. 3.

XENODOCHIUM, Is interpreted an Inn, allowed by public licence for the entertainment of strangers and other guests: Ate an Hospital. Focah, strigo vulgaris. XEROPHAGIA, A kind of Christian Fait; the eating of dry meat. Litt. Dict.
Y

YARD, A Measure, three feet in length; by which cloth, linen, &c, are measured: It was said to be ordained by King Henry I., from the length of his own arm. Baker's Chron. See title Meafures.

YARDLAND, Virginia Terræ.] A quantity of Land, different according to the place or country; as at Winchester in Surrey, it is but fifteen acres, in other counties it is twenty, in some twenty-four, and in others thirty and forty acres. Brasl. liv. 2. c. 10.

YARMOUTH. There is an Act for regulating the time of bringing in and selling Herrings at the Fair of Great Yarmouth, fixing the prices and quantity by the Earl, &c. Stat. 31 Edw. 3. st. 1. c. 2. See title Pish.

YARN. No pernicious shall buy Yarn or Wool, but he that makes cloth of it. And none may transport Yarn beyond the Sea, Stat. 33 H. 8. c. 16. See title Wool.

YAUGH, A Yacht, or little bark; also a fly-boat, pinnace, &c. In Lat. called Cellus, à celeritudine, from its swiftness. Litt. Dict.

YEONOMOUS, Orceomus; An Advocate, Patron, or Defender. Vit. Abbai. S. Albani.

YEAR, Annu.] The time wherein the Sun goes round his compass through the twelve Signs, viz. three hundred and sixty-five days, and about six hours. A Year is twelve months, as divided by Julius Caesar: The Church has always begun the Year on the first day of January, called New-year's-day; but the civil account formerly, not till March the 25th. It appears by ancient grants and charters, that our Ancestors began the Year at Christmas, which was observed here till the time of William I., commonly called the Conqueror; but afterwards, for some time the Year of our Lord was seldom mentioned in Grants, only the Year of the Reign of the King. Mon. Aug. 1. 62.

There being a difference in the computation of time in these Kingdoms, and on some parts of the Continent, of eleven days; and frequent uncertainties having arisen from the different times of commencing the Year above-mentioned, (which introduced the mode of dating 1752, for days between the first of January and twenty-fifth of March,) all these inconveniences were remedied by Stat. 24 Geo. 2. c. 23; which enacts, That the first day of January next following the last day of December 1751 shall be the first day of the Year 1752. And that the first day of January next after the first day of January 1752, shall be the first day of the Year 1753. And so on, the first day of January in every Year, shall be the first day of the Year. And that after the first day of January 1752, the several days of each month shall go on in the same order; and the Feast of Easter, and other Moveable Feasts thereon depending, shall be ascertained according to the same method they then were, until the second day of September 1752; and that the natural day next following the said second day of September, shall be reckoned the fourteenth day of September, omitting, for that time only, the eleven intermediate days. And that the several natural days which shall succeed the said fourteenth day of September, shall be reckoned in numerical order according to the order and succession of days now used in the present Calendar. All writings, &c. after the first of January 1752, to be dated according to the New Style, After 2 September 1752, Hilary and Michaelmas Terms, and all Courts to be held on the same nominal days and times they then were. The several Years 1800, 1900, 2000, 2100, 2200, 2300, and any other hundredth Year, (except every four hundredth Year, of which the Year 2000 shall be the first,) shall not be deemed Bissextile or Leap Year, but common Years to consist only of 365 days. The Years 2000, 2200, 2400, and every other fourth hundred Year, from the Year 2000 inclusive, and all other Years, which are now esteemed Bissextile or Leap Years, shall for the future be esteemed Bissextile or Leap Years, consisting of 366 days.

A Calendar, and certain Tables and Rules for the fixing the true time of the celebration of the Feast of Easter, and the finding of the times of the Full Moons on which the same depends, are annexed to this Act, which are to be prefixed to all future editions of the Common Prayer Book. Courts of sessions and Exchequer in Scotland, and Markets, Fairs, and Marts to be held upon the same natural days they should have been held on, if this Act had not been made. The natural days and times for the opening and closing of Commons of Parliament, not altered by this Act. The natural days and times of payment of Rents, Annuities, Sums of Money or Interest, or of the Delivery of Goods, Commercator Expiration of Leases, &c, or of attaining the age of twenty-one years, &c. not altered by this Act. See 25 Geo. 2. c. 20. 26 Geo. 2. cc. 9, 14.

The mode of computation, introduced into England by the above Act, is called the New Style, to distinguish it from the former, called the Old Style, which still continues to prevail in many places; and the New Style had been used by other Nations, long previous to its adoption by the English.

The Old Style now prevails in Muscovy, Denmark, Holstein, Hamburg, Utrecht, Guelders, Part of Franland, Geneva, and in all the Protestant Principalities in Germany, and the Cantons of Switzerland.
YEAR—DAY AND WASTE.

New Style, is used in all the Dominions subject to Great Britain; in America, in Amsterdam, Rotterdam, Leiden, Breden, Middelburg, Ghent, Brussels, Brabant, and in all the Netherlands, except the places before-mentioned: —Also in France, before the last introduction of the unintelligible Revolutionary Style. Spain, Portugal, Italy, Hungary, Poland, and in all the Poppish Principalities of Germany and Cantons of Switzerland.

Year and Day, Anno & Dies.] A time that determines a Right, or works a Prescription in many cases by Law; as in case of an Ejectment, if the Owner challenge it not within that time, it belongs to the Lord; so of a Wreck, &c. See the Ejectment. A Year and a Day is given to prosecute Appeals, and for Actions in a Writ of Right, &c., after entry or claim, to avoid a fine. A person wounded may die within a Year and Day, in order to make the offender guilty of Murder, &c. See 3 Inf. 52; 6 Rep. 107. See titles Appeal of Death, Claim Entry; Fine; Homicide; Wreck; and other titles.

Year, Day, and Waste, Anno, Dies, & Paflum.] A part of the King’s Prerogative, whereby he hath the profits of lands and tenements for a Year and a Day of those that are attainted of Felony, or of any but himsell, whereas the person attainted was feigned of an estate of inheritance, either in his own or in his Wife’s right. And it is laid by some, that the King hath held his right, and also a right to hold such lands for a Year and a Day. But it is held by others, that the right to hold the lands for a Year and a Day was given to the King in lieu of the Waste, and it seems implied in Magna Charta, cap. 22, which says, that the King shall hold not over the lands of those convicted of Felony but for one Year and a Day, and making no mention of the Waste, it seems plainly to intimate, that at the time of the making that statute, the King was thought to have no other right but only to the Year and Day. 2 Hawk. P. c. 49; 8. See Parliam. I. 1.

And where the treaty of Prerogativa Regis, made in 17 Edw. 2, lays, Et po/ quum Dominus Rex habuerit annum, den, et auquam, tune reddatur tenementum illud capiitatis dominus suo illius, nisi prius facias faciam pro anno, die, & usque; this is so to be expounded, that forasmuch as it appears in the said old Books, that the Officers and Ministers did demand both for the Waste and for Year and Day, that came in lieu thereof, therefore this treatise named both, not that both were due, but that a reasonable fine might be paid for all that which the King might lawfully claim. But if this be against this branch of Magna Charta, then it is repealed by the act of 42 Edw. 2, c. 1. 2 Hawk. P. C. cap. 49; § 8.

Hereby (says Coke) it appears how necessary the reading ancient Authors is for understanding of ancient Statutes. And out of these old Books you may observe, that when any thing is given to the King in lieu or satisfaction of any ancient right of his Crown, when once he is invested with any of the ancient titles, his Officers and Ministers will, many times, demand the old, which may turn to great prejudice, if it be not duly and distinctly prevented. 2 Inf. 37.

If there be Lord, Meine, and Tenant, and the Meine is attainted of Felony, the Lord Paramount shall have the Meine, and the Tenant, and the Meine attainted shall have the profits of the lands during the life of Tenant in Tail, or of the Tenant for Life. 2 Inf. 37; 4. 2 Hawk. P. C. cap. 49; § 8. That being prov’d] Here proving, in a large sense is taken for attainted; For the nature and true sense of both these words, see the first part of the Infinitates; and likewise for this word Felony there. 2 Inf. 37; and see this Dict. title Attainted.

Of Felony] Must be understood in all manner of Felonies punished by death, and not of Petit Larceny, which notwithstanding is Felony. 2 Inf. 38. If Lord and Tenant are, and the Tenant is attainted of Felony, and the King has Amnum, Dies, & Paflum, yet if the Lord enters without due process, and the writ fed to the Eichester, the land shall be re-joined, and he shall answer for the meine injuries and profits. Br. Re-Seuer. pl. 50, cites Ed. 2, and Fitz. Traversy, 48.

The statute de Prerogativa Regis, cap. 15, wills, that if a Felon has land, tunc Rex etiam illius habeat, & habeat
YENEM, or YEOMAN, or YOMAN., A derivative of the Saxon Geomann, i. e. Communit. Thefe Geomans in his Britannia placed next in order to Gentlemen, calling them Gentlemen; whose opinion the Statute affirms, anno 6 Ric. 2. c. 14. and 20 Ric. 2. c. 3. Sir Thomas Smith, in his Republic, Anglorum, I. c. 23. calls him a Yeoman, whom our Law calls legem domini, which (says he) is in the English a free-born man, that may dispense of his own free-land in yearly revenues to the sum of forty shillings sterling. Veriginus, in his Restitution of decayed Intelligence, c. 10, writes: That Geomans among the ancient Teutonics, and Geomans among the modern, signifies as much as Common, and the letter g being turned into y, is written Yomen, which also signifies a Commoner. See title Proceded. 

Yeoman also signifies an Officer in the Kings house, in the middle place between the Serjeant and the Groom; as Yeoman of the Chantry, Yeoman of the Scullery, Stat. antig. 33 H. 8. c. 15. Yeoman of the Crown, Stat. antig. 3 Ed. 5. The word Youngmen is used for Yeomen, in the Stat. 33 Hen. 8. c. 10. Cowell.


YEVEN, or YEVEN, Given: Dated. Cowell. 

YELW, Said to be derived from the Greek ialéw, to hurt, probably because, before the invention of guns, our Ancestors made bows with this wood, with which they annoyed their enemies; and therefore they took care to plant the trees in the church-yards, where they might be often seen and preferred by the people. Minsho.

YIELDING AND PAYING, Redendo & Subendo.] Comes from the Sax. Gildan & Gildan; and in Domesday, Gilda is frequently used for Salvores, Redder, the Saxons C. being often turned into J. See title Dued.

YINGMANN, Mentioned in the Laws of King Hen, 1. c. 15. Spelman thinks this may be a mistake for lingshman, or, as we now say, Englishman: But perhaps the Yingmen were rather Youngmen, printed for Yeoman and Yemen, in Stat. 33 H. 8. c. 10.

YOLEBLET, Sax. Jocel.] A little Farm, &c. in some parts of Kent, so called from its requiring but a Yoke of Oxen to till it. Sax. Diæt.

YORK, Custom of. See title Executor V. 9.

YORK-BUILDINGS COMPANY, A Corporation or Company erected by statute for raising Thames Water in York Building: This Company having bought the forfeited estates in Scotland on the Rebellion, anno 1 Geo. 1. to enable them to make good their engagements to the Government, they were empowered by statute to dispose of rent-charges, to grant annuities, &c.

YPSIVREMATA, In Latin Alitomann, signifies God, the Thunderer.

YVERNAGIUM; See Hybernagium.

YULE. In the North of England, the country people call the Feast of the Nativity of our Lord by the name of Yule, which is the proper Scotch word for Christmas; and the sports used at Christmas, here called Christmas Gambols, in Scotland they term Yule Games. The Statute 1 Geo. 1. c. 8, was made for the repeal of a repealing act, passed in the Parliament of Scotland, intitled "An Act for discharging the Yule-Facans," See Gilt.
ZABOLUS, i.e. Diabolus, as used in many old Writers, viz. Edgar. in Leg. Manch. Hyder. c. 4: Orderis Vitalis 460, &c.
ZABULUM, Latin, Sabulum.] Gross sand or gravel.
Cowell.
ZALA, i.e. Intendium; from whence we derive the English word Zeal.
ZANT-KILLOW, A measure containing six English bushels.
ZATOVIN, Satin, or fine Silk. Mon. Ang. iii. 177.
ZEALOT, Zelotes.] Is for the most part taken in pejorativo, so that we term one that is a Separatist or Schismatic from the Church of England, a Zealot or Fanatic.
ZENIA; See Xenia.
ZETA, A room kept warm like a stove; a withdrawing chamber with pipes conveyed along in the walls, to receive from below either the cool air in the Summer, or the heat of fire, &c. in Winter: It is called by our English Historians a Dining-room, or Parlour. Of the viae 8, Elpheg apud Wharton: Mon. ii. 127.
ZODIACK, Zodiacus.] An imaginary circle in the Heavens, containing the twelve Signs through which the Sun passes every year. Litt.
ZUCHE, Zuchus, Stirps secus & aridus.] A withered or dry flock of a tree.—See Placit. Forst. in Conv. Not. de Auno 8 H. 3, where it seems a writ of Ad quod damnum issued, on granting of Zuches or dead wood in a Forest, &c. Spelm.
ZYGOSTATES, Libripos.] The Clerk of the Markets, to see to Weights. Spelm.
ZYTHUM, A drink made of corn, used by the old Gauls; so called from the feething or boiling it, whence Cyder had its name. Spelm.
ADDENDA ET CORRIGENDA

IN THIS VOLUME.

IMPEACHMENT. Column 2. line 5. add— But see contra, 8 Comm. c. 19. n.
At the end of the title add— See Raym. 120: 1 Leon. 384; and this Dictionary, title Parliament VIII.

INFORMATION. Div. I. parag. 2. line 4. after “Attorney-General,” add— (or, during a Vacancy of that Office, by the Solicitor-General; Wilkes’ Ca. Bro. P.C.)

INSURANCE. Div. III. 6. At the end of this Division, add— Since the above was written, the cases of Brandon v. Nesbitt, and Brifoys v. Thomas, were determined. See 6 Term Rep. 23; 35. In the first of these, the Court of B. R, declared, that no Action could be maintained either by, or in favour of, an Alien Enemy; And, as a consequence of that determination, in the latter case, after a long argument, it was decided, by the positive opinion of the Court, in a very few words, that the Insurance of an Enemy’s Property is illegal; and no Action can be maintained thereon. See also Parke’s Law of Insurance, 3d Edition.

JOINTENANCY; IN THINGS PERSONAL. Line 14. after Litt. § 311; Read thus— So also, if a Will be given by Will to two or more, equally to be divided between them, and the Survivors, and Survivor of them; this has been held to make them Tenants in Common; as the same words would have done in regard to Real Estates: The word Survivors, &c. being to be understood of such of them as shall be living at the Testator’s death. 1 Eq. Ab. 202. c. 11. But in a case of a Devise of a Debt to two or more, “share and share alike, equally to be divided between them, and if either of them die, to the Survivors or Survivor of them,” it was determined in Dom. Prat. that they were joint-tenants; and the decree of Cosyer, Ld. C. declaring them Tenants in Common was reversed. See Cosy’s P. Wms. 1. 96, and the note there;—Residuary Legatees, &c.

JUS PATRONATUS. Line 3. after “learning” add— Who are to summon a Jury of six Clergymen and six Laymen, to inquire, &c.

NATIONAL DEBT. Column 2. instead of the five last lines, Read:
By the Commissioners’ Account, published on the first of August 1796, it appears that they have laid out £14,969,312: 18: 6 Sterling in the purchase of £20,117,450 Stock in the 3 and 4 per Cents.
Line 31 of that Column, for “between 250 and 300,” read “nearly 400.”

PARLIAMENT. In the arrangement of the Divisions at the beginning of the Title, transpose the lines V. 1: VI. (A): 2. thus—
V. 1. As Members, &c.
2. In their Judicial Capacity.
VI. (A) As relates to Taxes.

Div. VI. (B) 3; col. 3. of that Div. line 27, after 3 Lud. 455. Add, But a contrary determination was made by the Southwark Committee, in the first Section of the Parliament called in 1796; who declared a Candidate disqualified, on the ground of having treated at the former Election.

PAWNBROKERS.
ADDENDA ET CORRIGENDA.

PAWNBROKERS. Col. 2. line 9, after the word "exceeding" add—(43 s. eight-pence, and thence not exceeding 10l.) &c.—This alteration was made by fiat. 36 Geo. 3. c. 87; which fec.

PEERS OF THE REALM. Div. II. col. 4. line 7, after 87. add—

It seems now to be settled, that a Peerage cannot be transferred, (unless we consider the summoning of the eldest Son of a Peer by Writ as a Transfer of one of his Father's Baronies,) without the concurrence of Parliament; at least in those cases where the noble Personage has no other Barony to remain in himself: As otherwise, on such transfer, he would himself be deprived of his Peerage, and be made ignoble by his own act. The Earldom of Arundel (see ante) is now settled, by Act of Parliament, in the Norfolk Family: And even if it were not, it might be questioned, whether, under the supposition of no remaining Barony, such an one could now be otherwise conveyed; it being held that the whole Nation is interested in each individual Peer; And that a Peer cannot be deprived of his Peerage but by Act of Parliament. See Watkins's Notes on Gilbert's Tenures, Note XI. in p. 11; and p. 361.

POLICE. — Col. 3. parag. 3. line 2. for flat, 25 Geo. 2. read 28 Geo. 2. Col. 4. line 5. for Geo. 1. read Geo. 2. in both instances.

WILLS. — In the arrangement of the Divisions II. 2. line 2. for temporal read temporary.

THE END.