A

COMPENDIOUS

Law Dictionary,

Containing both an

EXPLANATION OF THE TERMS

AND THE

LAW ITSELF.

INTENDED FOR THE USE OF

THE COUNTRY GENTLEMAN, THE MERCHANT,

AND

THE PROFESSIONAL MAN.

By THOMAS POTTS, GENT.

FORMERLY OF SKINNER'S HALL.

LONDON:

PRINTED FOR T. OSTELL, AVE-MARIA-LANE.

1803.
PREFACE

A DICTIOARY OF THE LIME OF TELGRANG, under
J. CUNDEE, PRINTER,
A DICTIONARY of the Laws of England, undertaken with the view of arranging properly, with regard to matter, and method, and at the same time compressing into a narrow compass, the substance of the many voluminous works written on the Statute and Common Law, cannot, it is presumed, fail to be acceptable to every one, in any manner engaged in a practical department of the law.

But the author of this work, has not confined it solely to the use of the professional man; as it has been both his aim and wish, to render it equally serviceable to the merchant and trader, who, amidst the variety of business, have little leisure to consult those elaborate works, which comprehend and elucidate commercial legislation, and the almost inexpressibly diversified cases which have been determined constructive of those laws: For their use, therefore, the most eminent writers on the Bankrupt Laws, Insurance, Bills of Exchange, Promissory Notes, &c. have been carefully consulted, and the essential contents briefly given.

As there are however, subjects of the first consequence to the mercantile interest of this kingdom, namely, the Customs and Excise Laws, which on account of their great length could not be inserted in this Dictionary; the proprietors aware of their great importance, have commenced and will speedily publish, A complete Abridgment of the Customs, Excise, Import, and
PREFACE.

and Export Laws, which will form a small additional volume, or may be bound up with this work. The merchant and tradesman will easily perceive the utility of this plan, and as it has been arranged, chiefly with a view to their convenience, it is presumed that the whole will form the most complete Commercial Assistant ever published, and merit their unqualified approbation.

The country gentleman will here also find the nature of tenures fully explained under their proper heads, and the County Courts, Courts Baron, Courts Leet, Game, and Tithes, concisely but clearly treated on.

To the professional man, it is not meant to insist, that this production can possibly answer all the purposes of the voluminous library of the lawyer; but as the authorities recited in support of the authenticity of the respective articles, are particularly referred to, it will serve him as a most complete index, whereby he may be enabled immediately to direct his attention to any point under consideration.

As the author has selected this work, from writers of the most acknowledged authority, and has devoted it to the use of the Country Gentleman, the Merchant, and the Professional Man, he trusts it will not be found unworthy of a place, either in the Library, the Counting-house, or Office.
TO THE

RIGHT HONOURABLE

LORD ELLENBOROUGH,

BARON ELLENBOROUGH, OF ELLENBOROUGH, IN THE COUNTY
OF CUMBERLAND,

Lord Chief Justice of the Court of King’s Bench.

MY LORD,

I HAVE presumed to dedicate this trifling Work to your Lordship, as most competent to judge of its public utility. The design of reducing the Law Dictionary into one small volume, will, I trust, merit the approbation of every professional man, and (should it be honoured with your Lordship’s patronage) obtain that share of public favour, which would ever constitute the pride and ambition of

My Lord,

Your Lordship’s

Most obedient humble Servant,

THE AUTHOR.

Camden Town,
Nov. 1, 1803.
ABACTORS, drivers away, and stealers of cattle, or beasts in herds or great numbers.

ABATE, to overthrow, demolish, destroy, or beat down.

ABATEMENT, in its most general signification, relates to writs or plaints, and signifies the quashing the plaintiff's writ or plaint, but is used by our law in three different senses. 1 Inst. 134. b. 277.

The first, that of removing a public or private nuisance. If a new gate be erected across the king's high-way (which is a public nuisance), any of the king's subjects passing that way may cut it down and destroy it. Or if a house or wall be erected so near to mine that it stop my ancient lights (which is a private nuisance), I may enter my neighbours land, and peaceably pull it down. And the reason why the law allows this summary method of doing one's self justice, is, because injuries of this kind require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice. 3 Black. 5.

The second, the defeating or overthrowing of an action, by some defect in the proceedings. The chief pleas in abatement are—To the jurisdiction of the court.—To the person of the plaintiff.—To the person of the defendant — Outlawry — Excommunication Alienage—Attaint—Privilege—Mismomer—Addition—To the writ and action—To the count, or declaration—By the demise of the king. The marriage, or death of the parties; for these and many other causes, the defendant oftentimes prays that the suit of the plaintiff may for that time cease. And in case of abatement in
these respects, all writs and process must begin de novo. In the
case of an indictment, or a criminal process, the defendant may
plead an abatement, that his name is not as in the indictment spe-
cified, or that they have given him a wrong addition, as yeoman,
instead of gentleman; and, if the jury find it so, the indictment
shall abate. But he who takes advantage of a flaw, must at the
same time shew how it may be amended, so as to give the plaintiff
a better writ: which is the intent of all pleas in abatement. 4 Black.
355. Finch 365. 4 Durnf. and East 227.

As pleas in abatement enter not into the merits of the cause, but
are dilatory, it is enacted, by the statute of 4 and 5 Ann. c. 16,
that no dilatory plea be received unless upon oath, and probable
cause shewn to the court: that no plea in abatement be received
after a respondeas ouster; that they are to be pleaded before impar-
lance; that when issue is joined on them, if it be found against him
who pleads such dilatory plea, it should be peremptory. 1 Lutw.
178. 2 Lutw. 1117. 2 Show. rep. 42.

The third is, where the rightful possession or freehold of the heir,
or devisee, is defeated or overthrown by the intervention of a stran-
ger. And herein it differs from intrusion, which is the entry of a
stranger, after a particular estate of freehold is determined before
him in remainder, or reversion. An abatement, is always to the
prejudice of the heir or immediate devisee; an intrusion is always
to the prejudice of the remainder-man or reversioner. The remedy in
abatement or intrusion, may be by entry, without the parties being
compelled to bring their action, for as the entry of the wrong-doer
was unlawful, it may be remedied by the mere entry of him who
hath right. 3. Black. 175.

ABBAT, or Abbot, a spiritual lord or governor, having the
rule of a religious house. Of these in England, some were elec-
tive, some presentative, some mitred, and others not. Those who
were mitred, had episcopal authority within their limits, and ex-
empted from the jurisdiction of the diocesan, but the other abbots
were subject to the diocesan, in all spiritual government.

ABBEY-LANDS, before the dissolution of the monasteries, were
many of them discharged from the payment of tythes, so long as
they remained in the hands of, and were cultivated by the religious
societies, and not by their tenants and lessees. These exemptions
were continued to the possessors of the said lands by the act of
31 Hen.
This act also created a law, that is, unity of the possession of the parsonage and land tythable, in the same hand; and though many of the titles of discharge are now lost, yet if the lands of a religious house have been held since the dissolution freed from payment of tythes, it shall be intended they were held so before. Wood b. 2, c. 2.

ABBREVIATION, by 4 Geo. II. c. 26. all law proceedings shall be in the English tongue, and written in a common legible hand and character, and in words at length and not abbreviated: but by 6 Geo. II. c. 14. numbers may be expressed by figures, and such abbreviations allowed, as are in common use.

ABUTTALS, the buttlings and boundings of land, either to the east, west, north, or south, shewing on what other lands, rivers, highways, or other places it does abut.

The boundaries and abuttals of corporations, church-lands, and parishes, are usually preserved by annual procession.

ABDICATION, in general, is where a magistrate or person in office, renounces and gives up the same before the term of service is expired. This word is frequently confounded with resignation, but differs from it that abdication, is done purely and simply; whereas resignation, is in favour of some third person. Chamb. Dict. 1 W. and M. Sess. 2. c. 2. sect. 7.

ABEREMURDER, plain or downright murder; as distinguished from the less heinous crimes of manslaughter, and chance medley.

ABET, to stir up or incite, encourage or set on: Abettors of murder are such as command, procure, or counsel others to commit a murder; and, in case they are present when the murder is committed, they shall be taken as principals; but, if absent at the time of the fact, they shall be considered as accessaries only. See Accessary.

ABEYANCE, is that which is in expectation, remembrance, and intendment of law. By a principal of law, in every land there is a fee simple in somebody, or it is in abeyance; that is, though at present it be in no man, yet it is in expectancy, belonging to him that is next to enjoy the land. Thus where no person is seen or known, in whom the inheritance can vest, it may be in abeyance, as in a limitation to several persons, and the survivor, and the heirs of such survivor, because it is uncertain who will be the survivor:
yet the freehold cannot, because there must be a tenant to the
pre­
cipe always. 1 Vezey, 174.

ABISHERSING, is by old authors termed a freedom or liberty,
because whoever hath this word inserted in a charter or grant, hath
not only the forfeiture and amerciments of all others within his fee,
for transgressions, but also is himself free from the control of any,
within their fee. Cowel.

ABJURATION, in the old law, signified a sworn banishment,
or an oath taken to forsake the realm for ever.

Anciently, if a person had committed a felony, and fled to a
church, or church-yard before he were apprehended, he could not
be taken from thence to be tried for his crime; but, on confes­
sion thereof before the coroner, he was admitted to his oath to
abjure the realm; which privilege he was to have forty days, dur­
ing which time any persons might give him meat and drink for his
sustenance, but not after, on pain of being guilty of felony. But,
by 21 Jac. c. 28. all privilege of sanctuary, and abjuration there­
upon, is utterly abolished.

Abjuration signifies also an oath, whereby every person in of­
fice, trust, or employment, abjures the pretend, and recognizes
the right of his majesty under the act of settlement, engaging to
support him, and promising to disclose all treasons, and traiterous
conspiracies against him.

ABOLITION, is the leave given by the king or judges to a cri­
minal to desist, from further prosecution.

ABORTION, if caused by giving a portion to, or striking a
woman big with child, was murder; but now is said to be a great
mispri son only, and not murder, unless the child be born alive,
and die thereof. Leach's Hau. 1. 31.

ABRIDGE, in the common law, signifies making a declara­
tion, or count shorter, by taking away or severing some of the
substance from it. A man is said to abridge his plaint in assize;
and a woman her demand in an action of dower, where any
land is put into the plaint or demand, which is not in the tenure
of the tenant or defendant; for, if the defendant plead non­
tenure, joint tenancy, &c. in abatement of the writ, the plaintiff
may leave out those lands, and pray that the tenant may answer
the rest. The reason of this abridgement of the plaint is, because
the certainty is not set down in such writs, but they run in gene­
neval; and, though the demandant hath abridged his plaint in
part, yet the writ will be good for the remainder. Cowel.
ABROGATE, to abrogate a law, is to lay aside, or repeal it.
ABSQUE HOC, when law proceedings were in Latin, were
words of exception made use of in a traverse; as where the de-
defendant pleads that such a thing was done at such a place, without
this, that it was done at such other place.
ACCAPITUM, a relief due to lords of manors.
ACCEDAS AD CURIAM, a writ that lies for him who has
received false judgment, or fears partiality in a court baron, or
hundred-court. It is directed to the sheriff, and issued out of
chancery; but returnable into B. R. or C. B. and is in the nature
a writ de false judicio, which lies for him that had received false
judgment, in the county court.
ACCEDAS AD DICECOMITEM, a writ directed to the co-
roner, commanding him to deliver a writ to the sheriff, who hav-
ing a pane delivered to him suppresses it. Cowel. Reg. Orig. 83.
ACCEPTANCE, the taking and accepting of anything in
good part, and, as it were, a tacit agreement to a preceding act,
which might have been defeated and avoided, were it not for
such acceptance had. If baron and feme, seized of lands in right
of feme, join and make a lease of feoffment, reserving rent; and
the baron die, after whose death the feme receive, or accept the
rent; by this the lease or feoffment is confirmed, and it shall bar
her. Co. Litt. 211.
So if tenant in dower lease for years, and die, and the heir ac-
cept the rent; but, if a parson make a lease for years not war-
ranted by the statute, acceptance of rent by a new parson will not
make it good. 1 Saund. 241.
And if a tenant for life, make a lease for years, there no ac-
ceptance will make the lease good, because it is void by his
death. Dyer 239.
But if a tenant in tail make a lease for years, rendering rent,
and die, and the issue accept the rent, it shall bind him. Should
such tenant in tail make a lease for years to commence after his
death, rendering rent; in such case, acceptance of rent by the
issue, will not make the lease good to bar him, because the lease
did not take effect in the life of his ancestors. Plowd. 418.
If a lease be made on condition that the lessee do no waste, and
he
he commit waste, and afterwards the lessor accept the rent, he cannot enter for the condition broken. 1 Inst. 211.

Though a lease may be made voidable by the default of the lessee, in not paying his rent according to the covenants therein contained, it can only be rendered void by the act of the lessor, that is by his entry: but if the lessor, after such non-payment at the day, and before re-entry accept the rent, that which was before voidable, becomes by such acceptance, a good lease; and a landlord accepting the last quarter's rent, when there are arrears on a former quarter, precludes himself from demanding the arrears. Comp. 803.

ACCEPTANCE, is that act by which the party upon whom a bill of exchange is drawn, makes himself liable to the amount therein contained. An acceptance may be absolute to the bill at all events, or it may be partial, as to pay a certain part of it; or, conditional, that is to say, upon the performance of a certain condition: in this case, when such condition is performed, the acceptance becomes absolute.

An acceptance may also be collateral, as an acceptance upon protest. An acceptance may be given either verbally or in writing; the latter, however, is the most usual and regular. But, any thing tending to shew that the party means to be bound by his undertaking, such as the signature of his initials; the day of the month; keeping the bill a longer time than usual; or any verbal promise, or agreement, will be tantamount to an acceptance. See Bills of Exchange.

An absolute acceptance, is an engagement to pay the bill according to its tenor; it is usually given by writing upon the bill accepted, with the name or initials of the drawee. The holder of a bill has a right to insist on a written acceptance, which is essentially necessary to give the instrument the full benefit of circulation. In accepting a bill payable after sight, it is customary also to write the day on which the acceptance is made. If the drawee keep the bill a longer time than is usual, or do any other act, which upon a fair construction gives credit to the instrument, and thereby induces the holder not to protest it as dishonoured, this will amount to an absolute acceptance, as will also an agreement to pay it at a future day.

A conditional acceptance, is an agreement to pay according to the tenor of the acceptance, as where the party renders himself liable
liable for payment, on a contingency only. Any act which evinces
an intention not to be bound, unless on a certain event, will be
sufficient to give the acceptance the operation of a conditional one.
Conditional acceptances become absolute as soon as the contin­
gency happens, or the condition is performed.

When a conditional acceptance is made in writing, the party
giving it, should also express the condition, otherwise he will not
be able to avail himself of such condition, against any other,
party. Doug. 296.

A partial acceptance, is an agreement to pay according to the
tenor of the acceptance, and may vary with respect to the sum,
time, or place; it may also vary from the tenor, in the manner
in which the acceptor undertakes to pay the bill. Either of these
acceptances, although the holder may refuse each, will be bind­
ing on the acceptor; and the holder of the bill, in either of these
cases, if he mean on default of payment to have recourse to
the other parties, should give notice to all of them, of such ac­
ceptance.

Acceptance upon honour, or supra protest, is a collateral accep­
tance, and may be made where the drawee refuses to accept, and
some third person, after protest for non-acceptance, accepts for
the honour of the drawer, or any particular indorser; in which
latter case, he should immediately send the protest to the indorser.
Not only a stranger, but the drawee, may accept a bill for ho­
nour of the drawer, or any of the indorsees.

It has been held, that the bill should be left with the drawee
twenty-four hours, that he may look into his account, and deter­
mine whether he will accept or not; but a bill or note, need not be
left on a presentment for payment.

ACCESSARY, one guilty of a felonious offence, not princi­
pally, but by participation; as by command, advice, or conceal­
ment. Cowel.

In the highest capital offence, namely high treason, there are
no accessories before or after; for the consenters, aiders, abet­
tors, and knowing receivers and comforters of traitors, are all
principals. Hale's Hist. 613.

In cases that are criminal, but not capital, as in petit-larceny,
and trespass, there are no accessories; for all the accessories be­
fore, are in the same degree as principals; and accessories after, by receiving the offenders, cannot as such, by law, be under any penalties, unless the act of parliament which induce those penalties, expressly extend to receivers or comforters.

Accessory before the fact, is one, who although absent at the time the felony was committed, doth yet procure, counsel, or abet another to commit a felony. An accessory before, is a greater offender than an accessory after; and therefore, in many cases, clergy is taken away from accessories before, which is not taken away from accessories after, as in petit-treason, murder, and willful burning. Hale's pl. 615.

Accessory after the fact, is where a person knowing the felony to be committed, receives, relieves, comforts, or assists the felon. Such as furnishing him with a horse to escape his pursuers—money or victuals to support him—a house or other shelter to conceal him—or open force and violence to enable him to break his goal, or to bribe the goaler to let him escape, makes a man accessory to the felony. 4 Black. 37.

ACCOMMODATION, signes a friendly agreement or composition between persons at variance.

ACCOMP&LCE, one of many equally concerned in a felony; generally applied to those who are admitted to give evidence against their fellow criminals. It is a settled point, that it is no exception against a witness, that he has confessed himself guilty of the same crime, if he have not been indicted for it; for, if no accomplices were to be admitted as witnesses, it would generally be impossible to find evidence, to convict the greatest offenders. Leach's Haw. 2. 37.

ACCOMPT, when persons have mutual dealings, signing the account is not necessary to make a stated one; but the act of keeping it any length of time, without making any objection, binds the person to whom it is sent, and prevents his entering into an open account afterwards. 2 Atk. 251.

Among merchants, it is looked upon as an allowance of an account current, if the merchant who receive it do not object to it, in a second or third post. 2 Vern. 276.

ACCORD, is an agreement between the party injuring, and the party injured, where one is injured by a trespass, or offence done
done, or on a contract to satisfy him with some recompence; which, if executed and performed, shall be a good bar in law, if the other party, after the accord performed, bring an action for the same. 3 Black. 15.

ACCOUNT, a writ or action which lies against a bailiff, or receiver, who by reason of his office or business, is to render an account to another, and refuseth to do it. The proceedings upon this action being difficult, dilatory, and expensive, it is now seldom used, especially if the party have other remedy. 1 Vern. 182.

ACCOUNTANT GENERAL, an officer in the court of chancery, appointed by act of parliament, to receive all money lodged in court.

ACCUSATION. By Magna Charta, no man shall be imprisoned or condemned on any accusation, without trial by his peers, or the law.

AC ETIAM, a clause in a writ, where, to entitle the court to jurisdiction, an additional cause of action is alleged; as where the defendant is required to answer the plaintiff in a plea of trespass, and also (ac etiam) to a bill of debt.

ACKNOWLEDGMENT MONEY, a sum of money, paid by the tenant on the death of the landlord, in acknowledgment of the new landlord.

ACQUITANDIS PLEGIS: A writ that lies for a surety against a creditor, who refuses to acquit him after the debt is paid. Cowel.

ACQUITTAL, in one sense, is to be free from entries and molestations of a superior lord, for services issuing out of land; and, in another, for the deliverance and setting free of a person, from the suspicion of guilt; one acquitted of a felony cannot be tried again for the same offence, as he may plead auter foitis ac- quit. Acquittal in law, is, when two are indicted, the one as principal, the other as accessory; the principal being discharged, the accessory will, of consequence be acquitted by law. Acquittal in fact, is, when by verdict, a person is found not guilty of the offence whereby he is charged. 2 Inst. 385.

ACQUITTANCE, a release or discharge in writing for a sum of money; and no one is obliged to pay a sum of money, if the demandant refuse to give an acquittance.

An acquittance given by a servant, for a sum of money received for
for the use of his master, shall be a good discharge for that sum, provided, such servant is in the general practice of receiving his master's rents, debts, &c.

An acquittance in full of all demands, will discharge all debts, except such as are on specialty under seal, which can only be destroyed by a general release.

**ACT OF PARLIAMENT.** By the 33 Geo. III. c. 13. every act of parliament, in which the commencement thereof is not directed to be from a specified time, and which shall pass after the 8th of April, 1793, immediately after the title thereof, shall be endorsed by the clerk of parliament, with the day, month, and year, when the same passed and received the royal assent; which endorsement, shall be taken to be the date of its commencement, where no other commencement shall be therein provided.

**ACTION,** is defined to be a legal demand of one's right; and implies a recovery of, or restitution to something. The suit till judgment, is properly called an action, but not after; and therefore a release of all actions, is regularly no bar of an execution. Co. Lit. 289.

Actions, are divided into criminal and civil; criminal, are either to have judgment of death, or only to have judgment for damage to the party, fine to the king, imprisonment, &c. A civil action, is that which tends only to the recovery of what is due to a person, as action of debt, &c. Civil actions are divided into real, personal, and mixed. Co. Lit. 284.

**Action real,** is that which concerns real property only, whereby the plaintiff or demandant, claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee simple, fee-ran, or for term of life. 3 Black. 117.

**Action personal,** is that which one man may have against another, by reason of any contract for money or goods, or for any offence or trespass done by him, or some other, for whose act he is answerable. Bract. lib. 3. c. 3.

Mixed actions, are those in which the freehold is recovered, and also damages for the unjust detention of it. Co. Lit. 284. For the various kinds of actions, see Covenant, Debt, Detinue, Slander, Trespass, Trover, &c.

**ACTOR.** The proctor, or advocate, in civil law courts.

**ACTS OF PARLIAMENT.** Statutes, acts, or edicts, made by
by the king, with the advice and consent of the lords spiritual and
temporal, and commons, in parliament assembled. An act of
parliament, is the exercise of the highest earthly authority that the
kingdom acknowledges. It hath power to bind, not only every
subject, but even the king himself, if particularly named therein,
and cannot be altered or repealed, but by the same authority.

Where the common law and a statute differ, the common law
gives place to the statute; and an old statute, gives place to a new
one. 1 Black. 89.

ADDITION, signifies a title given to a man, beside his christian
and surname, setting forth his estate, degree, mystery, trade, place
of dwelling, and

Additions of estate, are yeoman, gentleman, esquire, and the
like: additions of degree, are names of dignity, as knight, baron,
earl, marquis, duke: and additions of mystery are printer, painter,
mason, carpenter, distiller: additions of towns, as London, Bristol,
&c. By 1 Hen. V. c. 5. it is provided, that in every original
writ of actions, personal, appeals, and indictments, in which the
exigent shall be awarded, to the names of the defendants of such
writs, additions shall be made of their estate, &c.

ADEMPTION, or taking away of a legacy, arises from a sup­
posed alteration, of the testator's intention.

ADJOURNMENT, a putting off until another day, or to
another place.

ADJUDICATION, a giving, or pronouncing judgment.

ADMEASUREMENT, is a writ brought for remedy against
such persons, as usurp more than their share. It lies in two cases,
one is termed admeasurement of dower, where the widow of the
deceased holds from the heir, or his guardian, more in the name
of her dower, than of right belongs to her. The other is admeasure­
ment of pasture, which lies between those that have common of
pasture appendant to their freeholds, or common of vicinage; in
case any one of them surcharge the common with more cattle

ADMINISTRATOR, is a person to whose charge is committed,
by the ecclesiastical court, the personal property of a person dying
intestate, for which he is accountable when thereunto required.
See Executor.

ADMIRAL, an officer or magistrate of high authority, having
the government of the royal navy, and in his court, the determination of all causes belonging to the sea, and offences committed thereon. This office is now usually exercised by commissioners, who, by stat. 2 W. & M. c. 2, are declared to have the same authorities, jurisdictions, and power, as the lord high admiral.

ADMIRALTY. The admiralty, and admirals of England, had formerly jurisdiction in all causes of merchants and mariners, both civil and criminal; not only on the main sea, but in all foreign parts, within and without the king's dominions; but by 28 Hen. VII. c. 15, all felonies committed on the sea, shall be tried by commissioners nominated by the lord chancellor.

Civil Jurisdiction of the court. The proceedings are according to the method of the ecclesiastical court, and held at the same place. It is no court of record; and an appeal from its decision lies to the court of delegates. From the sentence of an inferior court of admiralty, an appeal lies to the court of the lord high admiral.

Criminal Jurisdiction. The judge of the admiralty presides in this court, as the deputy of the lord high admiral: and the court may be held in any place. Of the commissioners nominated by the lord chancellor, two common law judges are constantly appointed; and although the judges try the prisoner, yet the judge of the admiralty always presides.

ADMISSION to a benefice, is, when the bishop upon examination, approves of the person presented, as a fit person to serve the cure of the church to which he is appointed.

ADMITTANCE, is the giving possession of a copyhold estate, as livery of seisin is of a freehold. It is of three kinds, upon a voluntary grant by the lord—upon surrender by the former tenant—and admittance by descent. See Copyhold.

AD QUOD DAMNUM, a writ issuing out of and returnable into the chancery, directed to the sheriff, to enquire by a jury, what damage it will be to the king, or any other, to grant a liberty, fair, market, highway, or the like.

ADULTERY, is the sin of incontinence between two married persons; and if only one of the persons be married, it is called single adultery, to distinguish it from the other, which is double. It is an additional aggravation to the crime of adultery in a woman, that it not only entails a spurious race on the husband, for whom
he is obliged to provide; but also destroys that peace and mutual endearment, which ought always to subsist in the marriage state. This crime was severely punished by the ancient law of the land, but the present proceedings against adulterers, are chiefly in the ecclesiastical courts. The most lucrative method, however, of pursuing the adulterer, seems to be to institute an action against him in one of his Majesty's courts at Westminster, by the husband of the adulteress, for seducing and debauching his wife.

ADVOCATE, the patron of a cause, who assists his client with advice, and pleads for him.

ADVOW, or AVOW, to justify or maintain an act formerly done. As if one take a distress for rent, or other thing, and he that is distrained sues a replevin; he that took the distress, by maintaining the act, is said to avow.

ADVOWEE, he that hath the right to present to a benefice.

ADVOWSON, is the right of presentation to a benefice. Advowsons are either appendant, or in gross. Lords of manors being originally the only founders, and consequently the only patrons of the churches; the right of patronage, or presentation, so long as it continues annexed to the possession of the manor, is called an advowson appendant; and it will pass or be conveyed, together with the manor, as incident and appendant thereunto, by a grant of the manor only. But where the property of the advowson, hath been once separated from the property of the manor, by legal conveyance, it is called an advowson in gross, and it never can be appendant any more.

Advowsons are also either presentative, collative, or donative. Presentative, where the patron hath a right of presentation to the bishop, or ordinary; collative, where the bishop is the patron; and donative, when the king, or any subject by his licence, founds a church or chapel, and ordains that it shall be merely in the gift of the patron.

Advowson of religious houses, those who founded any house of religion had thereby the advowson or patronage of it.

AFFEERERS, such as are appointed in courts-leet upon oath, to set fines on such as have committed faults.

AFFIDATIO DOMINORUM, an oath taken by the lord in parliament.

AFFIDAVIT, is an oath in writing, sworn before some person legall...
legally authorized to administer the same; the true place of abode, and addition of the person making such affidavit, is to be inserted therein; it should set forth the matter of fact only, and not the merits of the cause, of which the court is to judge; it must also set forth the matter positively, and all material circumstances attending it, and be absolute; and not couched in words of reference; except in the case of assignees, executors, &c. who may swear to their belief of the matter.

AFFIRM, to ratify or confirm a former law or judgment.

AFFIRMATION, an indulgence allowed by law to the people called Quakers, who, in cases where an oath is required from others, may make a solemn affirmation that what they say is true. But their affirmation is confined to civil cases, and is not allowed in any criminal cause.

AFFORCIAMENTUM CURLE, the calling of a court upon a solemn occasion.

AFFOREST, to turn ground into a forest.

AFFRAY, is a public fighting (if it be in private it is no affray, but an assault); and is a public offence to the terror of the king's subjects. All affrays in general, are punishable with fine and imprisonment. 1 Haw. 138, and a constable is not only empowered to part an affray in his presence, but can justify commitment till the offenders find sureties for the peace. Cro. Eliz. 375.

AGE, in the law, is used for those special times, which enable persons, of both sexes, to do certain acts, which before, through want of years and judgment, they are prohibited to do. A man, at twelve years of age, ought to take the oath of allegiance to the king; at fourteen, which is his age of discretion, he may consent to marriage, and choose his guardian; and at twenty-one he may alien his lands, goods, and chattels. A woman, at nine years of age, is dowerable; at twelve she may consent to marriage; at fourteen she is at years of discretion, and may choose a guardian; and at twenty-one may alienate her lands, &c. 1 Inst. 76.

AGENT, a person appointed to transact the business of another. It is a principle of law, that whenever a man has a power, as owner, to do a thing, he may, as consistent with this right, do it by deputy, either as attorney, agent, factor, or servant. It has been asserted, that agents should be appointed by a formal power of attorney; but this is not necessary; for the authority of an agent
agent to draw, indorse, and accept bills in the name of his principal, is usually in words. 7 T. R. 209. 12 Mod. 634.

If a person be appointed a general agent, the principal is bound by all his acts. But an agent, specially appointed, cannot bind his principal by an act whereby he exceeds his authority. 5 T. R. 757.

AGENT AND PATIENT, is the person who is the doer of a thing, and the party to whom done; thus, if a man be indebted to another, and afterwards make the creditor his executor, and die, the executor, by retaining so much of the goods of the deceased as will satisfy his debt, is both agent and patient. But a man shall not be the judge of his own cause. 8 Rep. 138.

AGE-PRIER, is where an action is brought against one under age, for lands which he hath by descent, who by petition or motion shews the matter to the court, and prays that the action may stay till his full age, which the court generally agrees to.

AGILD, free from penalties, not subject to the customary fine or imposition.

AGISTMENT, is where other men's cattle are taken into any ground, at a certain rate for their feeding. There is also an agistment of sea banks, where lands are charged with a tribute to keep out the sea.

AGNUS DEI, a piece of white wax, stamped with the figure of a lamb, and consecrated by the pope: but not permitted to be brought into this kingdom, on pain of a premunire. 13 Eliz. c. 2.

AGREEMENT, is a memorandum, article, or minute, importing the consent or concurrence of two or more persons; the one in disposing of, and the other in receiving some property, right, or benefit, and is generally made preparatory to a more formal instrument of conveyance. The requisites of an agreement are, parties capable of contracting; and a property, right, or benefit, capable of being contracted for. Every agreement ought to be perfect, full, and complete, so as to shew with precision, what is intended to be stipulated between the parties, and should also make express provision against the possibility of failure in any of the contracting parties.

In many cases, the party injured by breach of an agreement, may have a remedy, either at common law, or in a court of equity. But wherever the matter of the bill is merely in damages, the remedy is at law, because the damages cannot be ascertained.
by the conscience of the chancellor, and therefore must be settled by a jury.  Abr. Eq. 16.

Although it is prudent that both parties should actually sign the agreement, it will be binding, notwithstanding the statute of frauds, if it be signed by one party only; provided the other party be so circumstanced, that he can have an adequate remedy thereupon. 1 Doug. 296.

AID-PRAYER, a term used in pleading, for a petition in court to call in help from another person, that hath an interest in the thing contested.

ALBA FIRMA, a white rent paid in silver, in distinction from that paid in corn, &c.

ALDERMAN, a magistrate subordinate to a mayor of a city or town corporate. This office is for life, so that when one of them dies, or resigns, a ward-mote is called, which returns the person they have chosen to the court of aldermen, who are obliged to admit him to supply the vacancy. All the aldermen of London, &c. are justices of peace, by charter of 1st Geo. II. and are exempt from serving inferior offices; nor shall they be put upon assises, or serve on juries, so long as they continue such.

ALEHOUSES. To prevent disorders in alehouses, no licence shall be granted to any person, not licenced the year preceding, unless he produce a certificate, under the hands of the parson, vicar, or curate, and the major part of the churchwardens and overseers, or else of three or four substantial householders and inhabitants of the parish, where such alehouse is to be; setting forth that such person is of good fame, &c. and it shall be mentioned in such licence, that such certificate was produced, otherwise it shall be null and void. 26 Geo. II. c. 31. and by 26 Geo. II. c. 41. Justices, on granting licences, are to take recognizances in 10l. with sureties in the like sum, for the maintenance of good order. Licences to be granted on the 1st of September, or within twenty days after, yearly, and to be for one year only. Penalty for selling ale, &c. without a licence (except at public fairs, during which, on paying the duty for the ale, &c. sold, any one may sell ale, &c. without licence), for the first offence 40s. for second 4l. for the third 6l.; and no person can sell wine by retail, to be drank in his own house, who has not also an ale licence.

ALE-SILVER, is a rent or tribute paid annually to the lord mayor
mayor of London, by those that sell ale within the liberty of the

ALE-TASTER, an officer in every court leet, sworn to look to
the assize and goodness of ale and beer within the lordship. In
London there are ale conners, chosen by the livery, to taste ale,
beer, &c. in the limits of the city.

ALIAS, is a second writ, after a former one has been sued out
without effect.

ALIAS DICTUS, is used in the description of a defendant,
where his true name is not certainly known.

ALIENS, are persons not born within the dominions of the

crown of England, or within the allegiance of the king; but from
this rule of law must be excepted the children of the kings of

No alien can be a revenue officer, or hold any office under the

A crown. The issue of an English woman by an alien, born abroad,
is an alien. 4 Dunf. and East. 400.

Aliens cannot have no heirs, because they have not in them any
inheritable blood. 2 Black. 249.

All persons being natural born subjects, may inherit as heirs to
their ancestors, though those ancestors were aliens.

If an Englishman living beyond the sea, marry a wife there,
and have a child by her, and die, this child is born a denizen, and
shall be heir to him, notwithstanding the wife was an alien. Cre.
Car. 601.

If an alien be made a denizen by letters patent, and then pur-
chase lands, his son born before his denization shall not inherit
those lands; but a son born afterwards may, even though his elder
brother be living. 2 Black. 249.

Every foreign seaman, serving on board an English ship two
years, in time of war, is, by 13 Geo. II. c. 3. naturalized.

All masters of ships, arriving from foreign parts, are to give an
account at every port, of the number and names of every foreigner
on board, under the penalty of forfeiting ten pounds for each
alien who has been on board, at the arrival of the ship or vessel.
33 Geo. III. c. 4.

Every alien neglecting to pay due obedience to the proclamation
of his majesty, &c. directing that any alien who may be with-
in this realm, or may hereafter arrive therein, to depart therefrom

within
within a time limited, shall on conviction, for the first offence suffer imprisonment for any time not exceeding one month; and not exceeding twelve months for the second, and at the expiration thereof, depart out of the realm within a time to be limited by the judgment: and if such alien be found therein after such time so limited, without lawful cause, being duly convicted thereof, he or she is to be transported for life. And secretaries of state, or lord lieutenant of Ireland, &c. may grant warrants to conduct such aliens out of the kingdom, as they apprehend will not pay due obedience to such proclamation. 42 Geo. III. c. 92.

ALIENATION, transferring the property of any thing from one man to another. All persons who have a right to lands (except tenants for life, &c. which incurs a forfeiture of estate,) may generally alien them to others. Thus to alien land in fee, is to sell the fee simple thereof; and to alien in mortmain, is to make over lands, &c. to a religious house, or body politic, for which the king’s licence is to be obtained. 15 R. II. c. 5. 1 Inst. 118.

ALIMONY, is that maintenance, which, after a divorce of husband and wife a mensa et thoro, the ecclesiastical judge allows to the woman out of her husband’s estate. But in case of an elopement, and living with an adulterer, the law allows her no alimony. 3 Black. 94.

ALLAY, or ALLOY, is a mixture of several metals with silver or gold; it is done to augment their weight, and thus defray the charge of coinage, and make it the more fusile. The allay in gold coin is silver and copper; and in silver coin, copper alone.

The standard of gold in England is twenty-two carats of fine gold, and two carats of allay, in the pound troy. The standard for silver is eleven ounces two pennyweights, and eighteen pennyweights allay of copper.

ALLEGIANCE, is the lawful duty from the subject to the sovereign; and is either natural, acquired, or local. Natural, as every subject born, immediately upon his birth ought to pay a natural allegiance to his sovereign. Acquired, where a man naturalized, or made a denizen, acquires allegiance to the King. Local, where a man, who comes under the dominion of the king, ought to pay a local allegiance. 7 Co. 4, 5, 6.

ALLEGIARE, to defend or justify by due course of law.

ALLEVIARE, to levy or pay an accustomed fine.
ALLOCATIONE FACIENDA. A writ for allowing to an accountant, such sums of money as he hath lawfully expended in his office; directed to the lord treasurer and barons of exchequer, upon complaint made.

ALLOCATO COMMITATU, a new writ of exigent, allowed before any other county court holden, on the former not being fully served or complied with.

ALLODIAL, entire or absolute property.

ALLUVIAN, is the washing of a sea, or of a river; if land be gained of the sea, by the washing up of sand and earth by imperceptible degrees, so as in time to make terra firma, it shall go to the owner of the land adjoining; but if the alluvian be sudden, and considerable, it belongs to the king by his prerogative. 2 Black. 262.

ALMANACK, is part of the law of England, of which the courts must take notice in the return of writs, &c. but the almanack to go by, is that annexed to the book of common prayer. The court may judicially take notice of almanacks, for, an almanack, wherein the father had written the day of the nativity of his son, was allowed as evidence to prove the non-age of his son. Raym. 84. M. 15. c. 2.

ALMNER, or ALMONER, an officer of the king's house, whose business it is to distribute the king's alms every day; this officer is usually some bishop.

ALNAGE, the measure of an ell, or measuring with an ell.

ALODIUM, signifies a manor.

ALTARAGE, the offerings made upon the altar, and the profit that arises to the priest therefrom; this was declared in the exchequer to mean tithes of wool, lambs, colts, calves, pigs, chickens, butter, cheese, fruit, herbs, and other small tithes, with the offerings due; but our parsons have generally contented themselves with the greater profits of glebe, and tenths of corn and hay, and have left the small tithes to the officiating priests. 26 Crow. 516.

ALTERATION, when witnesses are examined upon exhibits, &c. they are to remain in the office, and not to be taken back into private hands, by whom they may be altered.

AMBASSADOR, is a person appointed by one sovereign power
power to another, to superintend his affairs at some foreign court; and supposed to represent the power from which he is sent. The person of an ambassador is inviolable.

AMBIDEXTTER, is taken for a juror, or embracer, who takes money of both parties for giving his verdict; such a one shall forfeit ten times the sum taken. Crompt. Inst. 156.

AMENABLE, to be responsible or subject to answer, &c. in a court of justice.

AMENDMENT, is the correction of an error committed in any process, which may be amended after judgment; but if there be any error in giving the judgment, the party is driven to his writ of error; though, where the fault appears to be in the clerk who wrote the record, it may be amended. Terms of law.

AMERCEMENT, or AMERCIAMENT, the pecuniary punishment of an offender against the king, or other lord, in his court, that is found to have offended, and to stand at the mercy of the king or lord.

AMICUS CURÆ. If a judge be doubtful or mistaken, in a matter of law, a bystander may inform the court as amicus curæ. Inst. 178.

AMITTERE LEGEM TERRÆ, to lose and be deprived of the liberty of swearing in any court; such is the punishment of jurors found guilty in a writ of attaint. 5 Eliz. c. 9.

AMNESTY, an act of pardon or oblivion.

AMORTIZATION, an alienation of lands or tenements in mortmain, to any corporation or fraternity, and their successors, &c.

AMPLIATION, a referring of judgment till the cause be further examined.

AMY, is the next friend to be trusted for an infant.

AN, JOUR, ET WASTE, year, day, and waste; a forfeiture of lands to the king by tenants committing felony, and afterwards the lands fall to the lord.

ANCESTOR, one from whom an inheritance is derived.

ANCHORAGE, a duty paid by the ships for the use of the haven where they cast anchor. As all ports and harbours belong to the sovereign, no person can let an anchor fall therein, without paying for the same.

ANCIENTS,
ANCEINTS, gentlemen of the inn of court. In Gray's-Inn, the society consists of benchers, ancients, barristers, and students, under the bar; here the ancients are of the oldest barristers.

ANCIENT DEMESNE, or DEMAIN, is a certain tenure, whereby all manors belonging to the crown in the days of Saint Edward, or William the Conqueror, were held, and both their numbers and names were written in the Domeday-Book now remaining in the exchequer.

ANGEL, in the computation of money, ten shillings English.

ANGILD, the bare single valuation, or compensation of a criminal.

ANHLOTE, a single tribute, or tax.

ANIENS, void, of no force.

ANNATS, the same meaning with first fruits, because the rate of the first fruits paid for spiritual livings, is after the value of one year's profit.

ANNI NUBILES, when a woman is under the age of twelve years, her age to marry, she is said to be infia annos nubiles, 2 Inst. 434.

ANNO DOMINI, the computation of time from the incarnation of our Saviour, generally inserted in the dates of all public writings, sometimes with, and sometimes without the king's reign.

ANNOYANCE, any hurt done to a public place, as a highway, bridge, or common river; or to a private, as laying any thing that may breed infection, by encroaching, or the like.

ANNUITY, a yearly rent to be paid for terms of life, or years, or in fee; and is also used for the writ that lies against a man for the recovery of such a rent, if he be not satisfied yearly according to the grant.

ANSWER in Chancery. On an indictment for perjury, in an answer in chancery, it is a sufficient proof of identity, if the name subscribed be proved to be the hand-writing of the defendant; and that the same was subscribed by the master on being sworn before him.

ANTEJURAMENTUM, the oath sworn by an accuser to prosecute a criminal, and that taken by the accused on the day he was to undergo the ordeal. If the accuser failed to take this oath, the
the criminal was discharged; and if the accused did not take his, he was supposed guilty.

APOTHECARIES, within London and seven miles thereof, being free of the company; and country apothecaries, who have served seven years apprenticeship, shall be exempted from serving offices: their medicines are to be searched and examined by the physicians, chosen by the college of physicians, and if faulty burnt. 32 Hen. VIII. c. 40.

APPARATOR, or APPARITOR, a messenger that serves the process of the spiritual court: his duty is to cite the offenders to appear; to arrest them; and to execute the sentence or decree of the judges.

APPEAL, an accusation of another in a legal form, for a crime by him committed. Formerly there were several kinds of appeals, but those which require any consideration are, death, larceny, and rape, and that of mayhem, which is considered as a trespass; but, on account of the great nicety required in conducting them, these are now entirely disused; and indictment is the only method now taken. 4 Black. 313.

Appeal also signifies the removal of a cause to a superior controlling tribunal, where the party bringing the appeal is termed the appellant. An appeal is frequently brought in matters of trade; and, from decision in the plantations, an appeal lies to the king in council.

APPEARANCE, signifies the defendant’s filing common or special bail, when he is served with a copy of, or arrested on any process, out of the courts of Westminster. Defendants may appear in person, by attorney, by guardian, and next friend.

In person, where the party stands in contempt, for the court will not permit him to appear by attorney: also in capital, and criminal cases; where an act of parliament requires that the party should appear in person; and likewise in appeal or on attachment. 2 Haw. P. C. c. 22. s. 1.

By attorney, in all actions real, personal, and mixed, and for any crime whatsoever under the degree of capital, by favour of the court. F. N. B. 26. 1 Lev. 146.

By guardian and next friend, when under age. Co. Lit. 135. b. 2. Inst. 390.

APPELLOR, or APPELLANT, he who has committed some felony,
felony, or other crime, which he confesses and appeals; that is, accuses his accomplices.

APPENDANT, any inheritance belonging to another that is superior or more worthy; indifferent to things appendant, and things appurtenant. Thus common of Turbary cannot be appendant to land. 4 Rep. 37. But waifs and estrays may be appendant to a leet, and a leet may be appendant to a manor. 4 Rep. 36. 10 Rep. 64.

APPENDAGE, or APENAGE, was formerly the portion of the younger children of the kings of France; where, by a fundamental law, called the law of appendages, the younger sons had duchies, counties, or baronies granted to them.

APPORTIONMENT, is a division of rent into parts, according as the land whence the whole issues, is divided among two or more; for on partition of lands out of which a rent is issuing, the rent shall be apportioned. Danv. Abr. 507.

APPOSAL, of Sheriffs, the charging them with money received upon their accounts in the exchequer.

APPRAISERS of goods, are sworn to make true appraisement; and, if they value the goods too high, they shall be obliged to take them at the price appraised. Stat. 13 Ed. 1.

APPRENTICE, one who is bound by covenant to serve a certain time, upon condition of the master's instructing him in his art or mystery: but he must be retained by the name of an apprentice expressly, otherwise he is no apprentice, though he be bound. Dalt. c. 58.

An apprenticeship is a personal trust between master and apprentice, and determines by the death of either of them; and where a master dies, an apprentice is not obliged to serve the executors or administrators for the remainder of the term. Doug. 1266.

A person cannot be bound apprentice but by deed indented; and this must be complied with for all purposes, except for obtaining a settlement. 5 Eliz. c. 4. s. 25. But, by 31 Geo. II. c. 11, the apprentice may gain a settlement under such writing, though it be not indented.

Where a premium is given with an apprentice, the indentures must be, if within the bills of mortality, within one month, and elsewhere within two months after the date, taken to the stamp-office.
office in the former case: and, in the latter, either to the stamp-office, or the collector of the stamp-duties, and the master or mistress pay a duty of 6d. in the pound upon the premium given, if under 50l. and 1s. for every pound for all above 50l. and, if the full sum given with an apprentice be not inserted, and the duty paid, the indentures are void, and the apprentice not capable of following the trade, and the master liable to a penalty of 50l.

Every indenture for binding a poor apprentice must be on a sixpenny stamped piece of paper, or parchment; and an indenture of a poor or parish apprentice, assented to by two justices separately, is void; and no settlement is gained by serving under it. Dumf. and East 380. The churchwardens and overseers are not restrained to bind such children to the inhabitants of the parish, but are authorized to apprentice them to any other persons wherever resident who are willing to take them. 2 Dumf. and East 730.

An infant may voluntarily bind himself apprentice by indenture; but no remedy at law lieth against an infant; 5 Eliz. c. 4. If the father covenant, it will of course bind him, but the son must be of the party, otherwise it is no apprenticeship. 8 Mod. 190.

A man may, by law, chastise and correct his apprentice; but, if the master and his apprentice cannot agree, they may by 2 Geo. II. c. 19. be discharged at their mutual request, either at the quarter sessions, or by one justice with appeal to the sessions; who may, if they think it reasonable, direct restitution of a rateable proportion of the money given with the apprentice. Salk. 67. But if an apprentice, with whom less than 10l. has been given, run away from his master, he is compelled to serve out his term of absence, or make satisfaction for the same at any time within seven years after the expiration of the contract. 6 Geo. III. c. 26. And, if an apprentice leave his master's service before his time be expired, his master is entitled to all his earnings, Ves. 183. If a person entice away an apprentice he may be indicted, and the master has a remedy for damages by action. 6 Mod. 182. Whatever an apprentice gains is for the use of his master. Masters and apprentices in the city of London are regulated by the customs of that city. By that custom, every apprentice bound
to a freeman must be of 14 years of age, and his agreement must not be for a less term than seven years; and, if he break any of the covenants, an action may be brought against him as if he were of full age. Green's Privilege of the City. 27.

A apprentice in London, may be discharged from his master in the following cases: if the master give him unmerciful correction; if he do not provide for him good and wholesome necessaries; if the master turn him away, or refuse to receive him into his service; if he leave off trade, and do not provide another master for the apprentice; if he remove out of the freedom; if he neglect or refuse to instruct the apprentice in his art or trade; if the apprentice shall be under 14 years when bound, or shall be bound for less than seven years; or, if he shall not be enrolled within the first year. Green's Privilege of the City.

APPRENTICES, MARINE, parish boys ten years old, may be bound apprentices to the sea service till twenty-one, by the churchwardens and overseers, with the approbation of two justices, or the mayor. 3 Anne c. 6.

Masters of ships from the burthen of 30 to 50 tons, to take one such apprentice, and one more for the next 50 tons, and one more for every 100 tons that such ship shall exceed the burthen of 100 tons. 2 and 3 Anne c. 6. s. 7.

No master of a ship is obliged to take an apprentice under 13 years of age, or who is not healthy or strong; and any widow of such master, or his executor, or administrator, who shall have been obliged to take parish-boys apprentices, may have the power of assigning them over to another master of a ship; the boy's age to be inserted in the indentures; and the churchwardens and overseers to pay the master 50 shillings for clothing and bedding for the boy. No such apprentice to be impressed till eighteen years of age, or permitted to enter himself into his Majesty's sea service till that time. 2 and 3 Anne, c. 6. s. 2. and 4 and 4 Anne, c. 19.

Churchwardens shall send the indentures to the collector of the customs, at the port to which the master belongs, who is to register them, and make an indorsement upon the indentures of the registry, and transmit a certificate to the admiralty, containing the apprentice's name and age, and to what ship he belongs, who are to grant protections, from time to time, without fee or reward. 3 Anne,
3 Anne, c. 6. s. 5. Collectors refusing or neglecting to register and indorse such indentures, to forfeit five pounds. s. 5.

Voluntary Apprentices, to the sea-service, not to be impressed for three years, reckoning from the dates of their indentures. Indentures to be registered, certificates transmitted, and protections granted for three years.

No apprentices to the sea-service of 18 years of age shall be protected, who shall have been in the sea-service before the date of their indentures.

APPRENTICES to MANUFACTURERS, for the preservation of their health, all rooms and apartments belonging to any mill or factory, shall be washed twice at least in every year, with quick-lime and water, over every part of the walls and ceiling thereof; and shall have a sufficient number of windows and openings to insure a proper supply of fresh air. 42 Geo. III. c. 72. Every apprentice shall have one complete suit of clothing, with suitable linen, stockings, hats, and shoes, delivered to him or her, once at least in every year. s. 3. No apprentice shall be compelled to work more than 12 hours in any day. s. 4. Every such apprentice shall be instructed, for the first four years, at least, of his or her apprenticeship, in the usual hours of work, in reading, writing, and arithmetic, according to their age and abilities; and shall attend for the space of one hour at least every Sunday, and be instructed and examined in the principles of the Christian religion. s. 6. & 8. Apartments of male and female apprentices to be kept distinct, and two only shall sleep in one bed. s. 7. Justices, at their midsummer sessions yearly, shall appoint two visitors of such mills or factories, who shall report the condition thereof to the quarter-sessions.

APPROPRIATION, is the annexing of a benefice to the perpetual use of a religious house, bishopric, college, or spiritual person for ever; for which purpose the king's licence was to be obtained in chancery, and also the consent of the ordinary, patron, and incumbent. There are in England 2845 appropriations.

APPROPRIARE COMMUNIUM, to discommon, or inclose any parcel of land that was before laid open.

APPROVE, to approve land, is to make the best benefit of it by increasing the rent.

APPROVEMENT, is where a man hath common in the lord's waste,
waste, and makes an inclosure of part thereof for himself, leaving sufficient common, with egress and regress for the commoners.

APPROVER, a person who being indicted of treason or felony, for which he is not in prison, confesses the indictment; and, being sworn to reveal all the treasons and felonies he knows, enters before the coroner his appeal against all his partners in the crime. Hale, P. C. 192. All persons may be approvers, except peers of the realm, persons attainted of treason or felony, or outlawed, infants, women, persons non compos, or in holy orders. 3. Inst. 129.

Approvers, such as are sent into the counties to increase the farm of hundreds and wapentakes, which were formerly set at a certain rate to the sheriffs.

Approvers to the king, are those that have the letting of the king's demesnes in small manors to his best advantage.

APPURTENANCES, are things both corporeal and incorpo­real, appertaining to another thing as principal: as hamlets to a chief manor, common of pasture, piscary, &c. common of estovers to an house; outhouse, yards, orchards, and gardens, are appurtenant to a messuage.

ARAHO, to make an oath in the church, or some other holy place.

ARALIA, arable grounds.

ARATRUM TERRÆ, as much land as can be tilled with one plough.

ARBITRATION, is where the parties submit all matters in dispute, concerning any personal chattels, or personal wrong, to the judgment of one, two, or more arbitrators, who are to decide the controversy; or, if the two do not agree, it is usual to add that another person be called as umpire, to whose sole judgment it is then referred. 3 Black. 16.

The submission to arbitration, is the authority given by the parties in controversy to the arbitrators, to determine and end their grievances; and this being a contract, or agreement, must not be taken strictly, but largely, according to the intent of the parties submitted. West. Symb. part 2. s. 1. 2.

An annuity is not determinable by award; neither can partition be made by award. 1 Rol. Abr. Leases for years being chattels real, doubts have arisen if they could be transferred by award.
It seems safest, in every case, that the parties be bound in mutual obligations to perform the award, and if they refuse they forfeit their obligation. Debts on arrearages of accounts before auditors, shall not be discharged by award, nor can debts due by specialty, except amongst other things. 1 Rol. Abr. A certain fixed debt, cannot be the subject of award. 1 Buc. Abr. Causes criminal are not determinable by arbitration, because the perpetrators of crimes should be made known, and punished for the public good. 1 Buc. Abr. But, if the party injured proceed by way of action, as in assaults and batteries, libels, and the like, the damages may be submitted to arbitration. Comp. Arbitration. Matrimonial Causes cannot be submitted to arbitration. 1 Rol. Abr. 252. But the damages a person may have sustained by a promise of marriage, or any thing relating to a marriage portion, may. 16 Ed. IV. 2. It is usual to insert, in the submission, a clause that no bill in equity shall be filed against the arbitrators: which restriction will be a bar against such bill being brought. 2 Atkyns, 395.

ARBITRATOR, is a private extraordinary judge between party and party, chosen by their mutual consents, to determine controversies between them. The award of arbitrators is definitive, and being chosen by the parties, they are not tied to such formalities of law, as judges in other cases are; and yet they have as great power as other judges, to determine the matter in variance; but their determination must be certain, and it must be according to the express condition of the bond, by which the parties submit themselves to their judgments. 1 Nels. Abr. 234. Dyer 356.

ARCHBISHOP, the chief bishop in the province. See Bishop.

ARCHDEACON, one that hath ecclesiastical dignity and jurisdiction over the clergy and laity next after the bishop throughout the diocese, or in some part of it only. But the power of the archdeacon is different in different dioceses, and therefore, he is to be regulated according to the usage and custom of his own church and diocese.

ARCHERY, a service of keeping a bow for the use of the lord to defend his castle.

ARCHES COURT, the judge whereof is called the dean of
the arches; whose jurisdiction is properly over the thirteen parishes only, belonging to the archbishop of Canterbury, in London: but the office of dean of the arches having been united with that of the archbishop’s principal official, he now, in right of his last-mentioned office, receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province.

ARCHIVES, the rolls, or any place where ancient records, and charters, and evidences are kept.

AREREIMENT, surprise, affrightment.

ARGENTUM ALBUM, silver coin, in which some rents to the king were paid.

ARGENTUM DEI, money given in earnest upon striking any bargain.

ARMA DARE, to dub, or make a knight.

ARMA LIBERE, a sword and lance, which were usually given to a servant when he was made free.

ARMA MUTARE, a ceremony used to confirm a league of friendship.

ARMIGER, a name of dignity next above the degree of a gentleman, and below a knight; formerly an attendant on the order of knighthood, bearing their shields, from thence called scutarius, escuyer, and esquire.

ARMOUR, or ARMS, in the law, are extended to any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at, or strike another.

ARMS and AMMUNITION, no merchant-vessel is allowed to carry more than two carriage-guns of 4 pound calibre, nor more than in the proportion of two musquets for every ten men, except ships of marc, or vessels employed in the service of the victualling, ordnance, customs, excise, or post-office, without being regularly licensed for that purpose. 24 Geo. III. c. 47.

ARRAIGN, or ARRAIN, to arraign the assise, is to cause the tenant to be called, to make the plaint, and to set the cause in such order as the tenant may be forced to answer thereto. To arraign a prisoner, is to bring him forth to his trial when he is indicted. The prisoner on his arrainment, though under an indictment of the highest crime, must be brought to the bar without irons, and all manner of shackles and bonds: prisoners, however,
are now generally tried in their irons; because taking them off is attended with great pain and trouble.

By the common law, if a principal be acquitted, or pardoned, or die, the accessory shall not be arraigned.

ARRAY, in ancient times it was usual for the king, upon any great emergency, to issue commissions of array, directed to the principal persons in the respective districts, to muster and array all the men capable of bearing arms. Array is also applied to a jury, as set in order by the sheriff in his return of the panel.

ARREARAGES, or ARREARS, denote money unpaid in proper time, as rent behind, the remainder due on account, or a sum of money remaining in the hands of an accountant.

ARRENTATION, the licensing the owner of lands in the forest, to inclose them with a low hedge and small ditch, according to the assize of the forest, under a yearly rent.

ARREST, in civil cases, is a legal restraint of a person charged with some debt to an individual; and, in criminal cases, for some crime against the state; and it is executed in pursuance of the command of some court of record, or officer of justice.

Some persons are privileged from arrests, as members of parliament, peeresses by birth, marriage, &c. members of convocation actually attending them, ambassadors, domestic servants of ambassadors, king’s servants, marshals, or wardens of the fleet, clerks, attorneys, or other persons attending the courts of justice, clergymen performing divine service, suitors, witnesses subpoenaed, and other persons necessarily attending any court of record upon business, bankrupts coming to surrender within 42 days after their surrender, witnesses properly summoned before commissioners of bankruptcy, or other commissioners of great seal; sailors and volunteer soldiers, unless the debt be 20l., officers of court, only where they are sued in their rights; but not if as executors or administrators, nor in joint actions.

No writ, process, warrant, &c. (except for treason, felony, or for breach of the peace), shall be served on Sunday; but a person arrested the day before, may be re-taken on the Sunday.

No person can be arrested out of a superior court, unless the cause of action be 10l. and upwards; an arrest must be by corporal seizing, or touching the defendant.
An officer cannot justify breaking open an outward door or window to execute process, unless a stranger who is not of the family, upon a pursuit, take refuge in the house of another. The chamber of a lodger is not to be considered as his outer door. No officer shall carry his prisoner to any tavern without his consent, nor to gaol within 24 hours after his arrest, unless he refuse to go to some safe house.

In criminal cases, the causes of suspicion which justify the arrest of a person for felony are, the common fame of the country; the living a vagrant, idle, disorderly life, without any visible means to support it; the being in company with a known offender at the time of the offence; the being found in circumstances which induce a strong presumption of guilt; behaviour betraying a consciousness of guilt; and the being pursued by hue and cry. But none of these causes will justify the arresting a man for the suspicion of crimes, unless a crime were actually committed.

ARREST OF JUDGMENT, to move in arrest of judgment, is to shew cause why judgment should not be stayed, notwithstanding a verdict given; the causes of arrest of judgment, are want of notice of trial; where the plaintiff before trial treats the jury; the record differs from the deed pleaded; for material defect in pleading; where persons are misnamed; more is given and found by the verdict, than laid in the declaration; or, the declaration doth not lay the thing with certainty, &c.

ARRESTANDIS BONIS NE DISSIPENTUR, a writ which lies for a man whose goods, &c. are taken by another, who during the contest, doth or is like to make them away.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT, a writ that lieth for apprehending a person, who hath taken the king's prest-money to serve in the wars, and hides himself when he should go.

ARREXSTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM, a writ which lies for a denizen, against the goods of aliens found in this kingdom, in recompense of goods taken from him in a foreign country, after denial of restitution.

ARRESTED, is where a man is convened before a judge, and charged with a crime.

ARROWS, by an ancient statute, all heads of arrows shall be well
well brazed, and hardened at the point with steel, on pain of imprisonment.

ARSON, is house burning, and burning the house of another is felony. *Cr. Law, case 143*. It must be maliciously and voluntarily, and an actual burning; not putting fire only into a house, or any part of it, without burning; but if part of the house be burnt; or if the fire do burn, and then go out of itself, it is felony. *2 Inst. 188*. But it is not felony to burn a house (unless done with a fraudulent intent) of which the offender is in possession by virtue of a written agreement, for a lease for three years. *Cr. Law, 143*. If any servant through carelessness shall fire any house or out-house, and be thereof convicted on the oath of one witness, before two justices, he shall forfeit 100l. to the churchwardens of the parish where the fire shall happen, to be by them distributed to the sufferers; and, on non-payment thereof immediately on demand, the said justices shall commit him to some house of correction for 18 months, to be there kept to hard labour.

ARSER IN LE MAINE, burning in the hand, the punishment of criminals that have the benefit of clergy.

ART AND PART, a term used in Scotland, when one charged with a crime in committing the same, was both a contriver of, and acted a part in it.

ARTHEL, or ARDDEL, to vouch, one taken with stolen goods in his hands, was to be allowed a lawful arthel or voucher, to clear him of the felony. *26 Hen. VIII. c. 6*.

ARTICLE, signifies a complaint exhibited in the ecclesiastical court by way of libel.

*Articles of the Navy*, are rules and orders made by 31 Geo. II. c. 10. for the government of the royal fleet.

*Articles of the Peace*, are a complaint exhibited in the courts of Westminster, in order to compel the defendant to find sureties of the peace.

*Articles of Religion*, are the 39 articles, drawn up by the convocation in 1562, unto which persons admitted into ecclesiastical offices are to subscribe.

*Articles of War*, a code of laws made by his majesty, from time to time, for the regulation of his land forces, in pursuance of the several annual acts against mutiny and desertion.
ARTIFICERS, a stranger-artificer in London shall not keep more than two stranger servants. 2 Hen. VIII. c. 16.

Persons contracting with artificers in wool, iron, steel, brass, or other metal, &c. to go to any foreign country, shall be imprisoned three months; 5 Geo. I. c. 27. and, if any person shall contract with, or encourage any artificers employed in printing calicoes, cottons, muslins, or linens of any sort, or in making any tools or utensils for such manufactury, to go out of Great Britain to any port beyond the seas, he shall forfeit 500l. and be committed to the common goal of the county for twelve months, and until such forfeiture shall be paid. 22 Geo. III. c. 60. s. 12.

ASPORTATION, a felonious taking, and carrying away the goods of another; the continuance of the property in the possession of the robber, is not required by the law to compleat the crime.

ASSAULT AND BATTERY, an attempt or offer with force and violence to do a corporal hurt to another; and any injury whatsoever, be it never so small, being actually done to the person of a man, in an angry or revengeful, or rude or insolent manner, are batteries in the eye of the law. 6 Mod. 149.

A man may justify an assault in defence of his person, or of his wife, or master, or parent, or child within age, and even wounding may be justified in defence of his person, but not of his possessions. 5 Salk 46. And if he beat him who committed the assault, he may take advantage thereof, both upon an indictment, and upon an action. 1. Haw. 134.

ASSAY, the examination of weights and measures, by the clerks of markets and others.

ASSAYER OF THE KING, an officer of the king's mint, for the trial of silver, gold, &c.

ASSENT. See Executor, Legacy, Leases, &c.

ASSESSORS, those that assess public taxes, by rating every person according to his estate.

ASSETS, are goods or property in the hands of a person, with which he is enabled to discharge an obligation imposed upon him by another; they may be either real or personal. Where a person holds lands in fee simple and dies seized thereof, those lands when they come to the heir, are called assets. So far as obligations are left on the part of the deceased to be fulfilled, they are called
called assets real. When such assets fall into the management of executors, they are called assets inter vaines. When the property left, consists of goods, money, or personal property, they are called assets personal.

ASSIDERE, or ASSIDARE, to tax equally. Also to sign an annual rent, to be paid out of a particular farm.

ASSIGN, to set over right to another.

ASSIGNMENT, is a transfer or making over to another, of the right one has in any estate; but it is usually applied to an estate for life or years. And it differs in a lease only in this; that by a lease one grants an interest less than his own, reserving to himself a reversion; in assignment he parts with the whole property, and the assignee stands to all intents and purposes in the place of the assignor. 2 Black, 326.

ASSISE, is taken for the court, place, or time, when and where the writs and processes of assise are handled or taken. Concerning the general assises, all the counties of England, are divided into six circuits; and two judges are assigned by the king's commission to every circuit, who hold their assises twice a year in every county (except Middlesex where the king's courts of record are held; and his courts for his counties palatine), and have five several commissions.

A commission of assise directed to themselves and the clerk of the assise, to take the assises, that is to take the verdict of a peculiar species of jury, called an assise, summoned for the trial of landed disputes.

A commission of oyer and terminer, empowering them to hear and determine treasons, felonies, and other misdemeanors, whether the persons be in goal or not.

A commission of general goal delivery, to try every prisoner in the goal committed for any offence whatsoever, but only such prisoners as are in goal.

A commission or writ of nisi prius, by which civil causes, brought to issue in the courts above, are tried in the vacation by a jury of twelve men of the county where the action arises, and on return of the verdict of the jury to the court above, the judges there give judgment.

A commission of the peace, in every county of the circuits; and all justices of the peace of the county are bound to be present at the assises.
ASSISE OF THE FOREST, a statute touching orders to be observed in the king's forest.

ASSISERS, in Scotland, the same with jurors.

ASSISUS, rented or farmed out for such an assise, or certain assessed rent, in money or provisions.

ASSITHMENT, a wiregild or compensation, by a pecuniary fine.

ASSOCIATION, a writ sent by the king to the justices appointed to take assises, to have others associated unto them; as where a justice of assise dies.

ASSOILE, to deliver from excommunication.

ASSUMPSIT, an assumpsit is a voluntary promise made by word, or supposed to be made by word, whereby a person upon some valuable consideration, assumeth or undertaketh to perform or pay something to another.

An assumpsit is either express or implied. Express, is by direct agreement either by word, or by note in writing without seal; as when a person assumes or promises to pay money upon a bargain or sale, and fails so to do, an action of assumpsit lies against him. 3 Black. 157.

Implied contracts, are such as do not arise from the express determination of any court, on the positive directions of any statute; but from natural reason and the just construction of the law; extending to all presumptive undertakings and assumpsits: which though never, perhaps, actually made, yet constantly arise upon this general implication and intentment of the courts of judicature; that every man hath engaged to perform what his duty or justice requires. Thus where one takes up goods or wares of a tradesman, without expressly agreeing for the price. The law concludes that both parties did intentionally agree, that the real value of the goods should be paid; and an action of assumpsit may be brought accordingly. 3 Black. 162.

ASSURANCE OF LANDS, is where lands or tenements, are conveyed by deed; see also Insurance.

ASTARIUS HÆRES, where the ancestor by conveyance, hath set his heir apparent and his family in a house in his life-time.

ATTACH, to take or apprehend by commandment of a writ or precept.

ATTACHIAMENTA BONORUM, a distress taken upon goods
ATTACHMENT, is a process that issues at the discretion of the judges of a court of record, against a person for some contempt; against which all courts of record, but more especially those of Westminster-hall, may proceed in a summary way. Thus sheriffs and other officers are liable to an attachment, for an oppressive or illegal practice in the execution of a writ.

ATTACHMENT FOREIGN, is an attachment of the goods of foreigners, found in some liberty or city, to satisfy their creditors within such liberty. *Carth.* Rep. 66. And by the custom of some places, as London, &c. a man may attach money or goods, in the hands of a stranger; though by the custom of London money may be attached before due as a debt; but not levied before due. But a foreign attachment cannot be had when a suit is depending in any of the courts at Westminster; and nothing is attachable but for a certain and due debt. *Cro. Eliz.* 691.

ATTACHMENT OF THE FOREST, is the lowest of the three courts held there. The middle one, is called the Swanemote; the highest the justice in Eyre's seat.

ATTACHMENT OF PRIVILEGE, is where a man by virtue of his privilege, calls another to that court whereeto he himself belongs; and in respect thereof is privileged, there to answer some action.

ATTAINDER, is properly where sentence is pronounced against a person convicted of treason or felony: he is then tainted or stained; whereby his blood is so much corrupted, that by the common law his children or other kindred cannot inherit his estate, nor his wife claim her dower, and the same cannot be restored or saved but by act of parliament.

ATTAIN'T, is a writ that lies to enquire whether a jury of twelve men gave a false verdict. But this proceeding is now entirely disused; and instead of attain't, motions are usually made for new trials, when a verdict is against evidence. 3 Black. 390.

ATTENDANT, one that owes a duty or service to another. Thus there is a lord, mesne, and tenant; the tenant holds of the mesne by a penny; the mesne holds over by two-pence; the mesne releases to the tenant, all the right he hath in the land, and the
tenant dies; his wife shall be endowed of the land, and she shall be *attendant*, to the heir of the third part of the penny, not of the third part of the two-pence, for she shall be endowed of the best possession of her husband.

*ATTERMINING,* is used for a term granted for payment of a debt.

*ATTORNARE REM,* to assign or appropriate money or goods, to some particular use and service.

*ATTORNATO FACIENDO VEL RECIPIENDO,* a writ to command a sheriff or steward of a county, or hundred court, to receive or admit an *attorney,* to appear for the person that owes suit of court.

*ATTORNEY,* is a person legally authorized, by another to pay or receive monies, sue or transact any other kind of business, in the name of such person as shall appoint him his lawful attorney.

Attorney is either *public,* in the king's courts of record; or *private* upon occasion of any particular business; who is commonly made by virtue of a power of attorney, which must be drawn up in a legal form, adapted to the case.

*ATTORNEYS AT LAW,* are such persons as take upon them the business of other men, by whom they are retained. By the 2 Geo. II. c. 23. s. 5. no person shall be permitted to act as an attorney, or to sue out any process in the name of any other person in any courts of law, unless such person shall have been bound by contract in writing, to serve as a clerk for five years to an attorney duly sworn and admitted in some of the said courts; and such person, during the said term of five years, shall have continued in such service, and unless such person, after the expiration of the said five years, shall be examined, sworn, admitted, and enrolled. And for every piece of vellum, parchment, or paper, upon which shall be written any such contract, whereby any person shall become bound to serve as a clerk aforesaid, in order to his admission as a solicitor or attorney in any of the courts at Westminster there shall be charged a stamp-duty of 100l. 34 Geo. III. c. 14. And in order to his admission as a solicitor or attorney in any of the great courts of sessions in Wales, or in the counties palatine of Chester, Lancaster, or Durham, or in any court of record in England holding pleas to the amount of
forty shillings; and not in any of the said courts of Westminster, there shall be charged a stamp duty of fifty pounds. *Id.* Every attorney, solicitor, notary, proctor, agent, or procurator, practising in any of the courts at Westminster, ecclesiastical, admiralty, or cinque-port courts, in his majesty’s courts in Scotland, the great sessions in Wales, the courts in the counties Palatine, or any other courts holding pleas to the amount of forty shillings, or more; shall take out a certificate annually, upon which there shall be charged if the solicitor, &c. reside *within the bills of mortality* a stamp-duty of five pounds, in any other part of Great Britain three pounds, Persons practising after the 1st day of November 1797, without obtaining a certificate, shall forfeit fifty pounds, and be incapable of suing for any fees. An attorney shall not be elected into any office against his will, such as constable, overseer of the poor, or churchwarden, or any office within a borough; but his privilege will not exempt him from serving in the militia, or finding a substitute. *Black. Rep. 1123.* See Arrest and Privilege.

ATTORNEY OF THE DUCHY COURT OF LANCASTER, is the second officer of that court.

ATTORNEY OF THE WARDS AND LIVERIES, was the third officer of that court.

ATTORNEY-GENERAL, a great officer under the king, made by letters patent; whose office is to exhibit informations and prosecute for the crown in matters criminal; and to file bills in the exchequer, for any thing concerning the king in inheritance or profits; and others may bring bills against the king’s attorney.

ATTORNAMENT, is the consent of the tenant to the grant of the seigniory or the reversion, putting him into the possession of services due from such tenant.

AVAGE, a rent or payment which every tenant of the manor of Writtle in Essex, on the 6th of November pays to the lord for the privilege of pawnage in his woods.

AUCTIONS and AUCTIONEERS, every person exercising the trade of an auctioneer *within the bills of mortality*, shall pay twenty shillings annually for a licence; and without the said bills of mortality five shillings. Auctions and auctioneers are regulated by statutes 29, 30, 32 Geo. III. c. 63, 26, 41.

A bidder
A bidder at an auction, under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down.

AUDIENCE COURT, a court belonging to the archbishop of Canterbury, having the same authority with the court of arches, but inferior in antiquity and dignity.

AUDIENDO ET TERMINANDO, a commission to certain persons, in case of any insurrection or great riot, for the appeasing and punishment thereof.

AUDITA QUERELA, is, where a defendant against whom judgment is recovered, and who is therefore in danger of execution, or perhaps actually in execution, may be relieved upon good matter of discharge which hath happened since the judgment; as if the plaintiff have given him a release.

AUDITOR, is an officer of the king, or some other great person, who examines yearly the accounts of all under-officers, and makes up a general book, which shews the difference between their receipts and charge; such as the auditors of the exchequer.

AUDITOR OF THE RECEIPTS, an officer of the exchequer, who files the teller's bills, and having made an entry of them, gives the lord-treasurer, &c. a weekly certificate of the money received. [4 Inst. 107.]

AVENAGE, a certain quantity of oats paid by a tenant to his landlord as a rent.

AVENTURE, a mischance or accident causing the death of a man.

AVERAGE, is said to signify service which the tenant owes to his lord by horse or carriage; but is more particularly used for a certain contribution that merchants make proportionably to their losses, who have had their goods cast into the sea in the time of tempest.

AVERAGE OF CORN-FIELDS, the stubble or remainder of straw and grass left in corn-fields, after the harvest is carried away.

AVER-CORN, is a reserved rent in corn paid by farmers and tenants to religious houses.

AVERIA, signifies oxen or horses of the plough, and generally any cattle.
AVERIIS CAPTIS IN WITHERNAM, a writ for the taking of cattle to his use, who hath cattle unlawfully distrained by another, and driven out of the county where they were taken, so that they cannot be replevied by the sheriff.

AVERMENT, is an offer of the defendant to justify an exception pleaded in abatement, or bar of the plaintiff’s action, and is to ascertain that to the court which is generally or doubtfully alleged, so that the court may not be perplexed of whom or of what it ought to be understood. Heath’s Max. 42.

AVER-PENNY, money paid towards the king’s averages or carriages.

AVER-SILVER, a custom or rent formerly so called.

AUGMENTATION, the name of a court erected by Hen. VIII. for determining suits and controversies relating to monasteries and abbey lands.

AULA, a court baron.

AULA REGIS, was a court established by William the Conqueror in his own hall. It was composed of the king’s great officers of state resident in his palace, who usually attended on his person, and followed him in all his progresses and expeditious: which being found inconvenient and burdensome, it was enacted by the great charter, c. 11. that common pleas shall no longer follow the king’s court, but shall be holden in some certain place, which certain place was established in Westminster-Hall, where the aula regis originally sat when the king resided in that city; and there it has ever since continued. 3 Black. 37.

AUMONE, tenure in aumone is where lands are given to some church or religious house, on condition, some service or prayers shall be offered at certain times for the repose of the donor’s soul.

AUNCE-L-WEIGHT, an ancient manner of weighing by hand, but long since prohibited by statute.

AVOIDANCE, is where there is want of a lawful incumbent on a benefice, during which the church is quasi viduata, and the possessions belonging to it are in abeyance.

AVOWRY, is where one takes distress for rent, or other thing, and the party distrained sues a replevin, he who took the distress shall justify his plea for what cause he took it; and if in his own right
right, he must shew the same and avow the taking, which is his avoury.

AURES, the punishment of cutting off the ears, inflicted by the Saxon laws on those who robbed churches.

AURUM REGINÆ, the queen's gold. This is an ancient perquisite belonging to every queen-consort, during her marriage with the king, and due from every person who has made a voluntary offering or fine to the king, amounting to ten marks or upwards. As where 100 marks in silver be given to the king to have a fair, market, park, chase, or free warren, there the queen is intitled to ten marks in silver, or to one mark in gold.

AUTER DROIT, is where persons sue or are sued in another's rights, as executors, administrators, &c.

AUTERFOITS ACQUIT, is a plea by a criminal, that he was heretofore acquitted of the same treason or felony, for no one shall be brought into danger of his life, for the same offence more than once. 3 Inst. 213.

AUTHORITY, is a delegated power, by which one person authorizes another to act generally, or especially in his name; and by whose acts, where the authority is strictly pursued, the party delegating such power, will be bound. An authority may be given either verbally or in writing, but the latter is the most usual. Where one person is delegated to act for another, he must not use his own name only, but the name also of the person who gave the authority. 9 Rep. 76.

AURITIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM, a writ formerly directed to the sheriff of every county where the king or other lord had any tenements, to levy of them an aid towards the knighting of a son, and the marrying of a daughter.

AURITIUM CURIAE, a precept or order of court, for the citing of one party, at the suit and request of another, to warrant something.

AURILIUIM FACERE ALICUT IN CURIA REGIS, to be another's friend and solicitor in the king's court.

AURILIUIM REGIS, the king's aid, or money levied for the king's use, and the public service.

AURILIUIM VICE COMITI, a customary aid or duty, anciently
ciently payable to sheriffs out of certain manors, for the better support of their offices.

AWAIT, way-laying or laying in wait, to execute some mischief. It is enacted that no charter of pardon shall be allowed before any justice, for the death of a man slain by await, or malice prepense. 13 Rich. II. c. 1.

AWARD. See Arbitration.

B

BAARD an ancient sort of vessel, or transport.

BACCINUM, the service of holding the bason on the day of the king’s coronation.

BACHELERIA, the commonalty, or yeomanry.

BACHELOR, an inferior degree taken by students, before they attain to a higher dignity.

BACKVERIND, bearing upon the back, or about a man; as where the thief is apprehended with the stolen goods upon his back.

BACKING, a warrant of the justice of the peace, is, where a warrant granted in one jurisdiction is required to be executed in another; as where a felony has been committed in one county, and the offender resides in another: in which case, on proof of the hand-writing of the justice who granted the warrant, a justice in such other county, indorses, or writes his name at the back of it, thereby giving authority to execute the warrant in such other county.

BADGER, one that buys corn, or victuals, in one place, and carries them to another, to sell and make profit by them. By Stat. 5 and 6 Ed. VI. c. 14. such an one is exempted from the punishment of an ingrosser. But by 5 Eliz. c. 12. and 13 Eliz. c. 25. they are to be annually licensed by justices in the sessions, and must enter into recognizance not to do any thing under colour of their licenses, contrary to the statutes made against forestallers, ingrossers, and regrators.

BAIL, is the freeing, or setting at liberty, of one arrested, or imprisoned,
imprisoned, upon any action, civil or criminal, on surety taken for his appearance at a day and place certain, or when demanded.

Bail, in civil cases, is either common or special. Common bail is a matter of course, being nothing but a mere form upon appearance, after personal service of the writ, and notice to appear upon the defendant. If he appear thereto, his attorney puts in imaginary sureties for his future attendance, as John Doe and Richard Roe. But if the plaintiff will make affidavit, that the cause of action amounts to £101. or upwards, in order to arrest the defendant, and make him put in substantial sureties for his appearance, called special bail; it is then required that the true cause of action be expressed in the body of the writ, or process. 3-Black. 287:

Special bail, are two or more persons, who, after the arrest, undertake generally, or enter into bond to the sheriff in a certain sum, to insure the defendant's appearance at the return of the writ: this obligation is called the bail bond.

Bail in criminal cases. Upon offering sufficient surety, bail may be taken either in court, or in some particular cases, by the sheriff, coroner, or other magistrate, but most usually by justices of the peace; in the following cases, persons of good fame, charged with a bare suspicion of manslaughter, or other inferior homicide. Persons charged with petit larceny, or any felony not before specified. Accessaries to felony, not being of evil fame, nor under strong presumption of guilt. But bail cannot be taken upon an accusation of treason, nor of murder, nor in the case of manslaughter, if the person be clearly the slayer; nor such as being committed for felony have broken prison, nor persons outlawed, nor such as have abjured the realm, nor approvers, nor persons taken with the mainour, or in the fact of felony, nor persons charged with house burning, nor persons taken by writ of excom-unicato capiendo.

BAILIFF, a keeper, or protector. Hence the Sheriff is considered as bailiff to the crown, and his county, of which he hath the care, and in which he is to execute the king's writ, is called his bailiwick; so also his officers who execute writs, warrants, &c. are called bailiffs.

BAILIFFS OF COURTS BARON, summon those courts,
and execute the process thereof; they present all pound-breaches, cattle strayed, &c.

**Bailiwick**, signifies generally that liberty, which is exempted from the sheriff of the county, over which the lord of the liberty appoints a *bailiff*, such as the bailiff of *Westminster*.

**Bailment**, is a delivery of things, whether writings, goods, &c. to another, sometimes to be delivered back to the *bailor*; that is to him who so delivered them; sometimes to the use of the *bailee*; that is, of him to whom they are delivered; and sometimes also to be delivered to a *third person*: this delivery is called a *bailment*. 2 Black. 451.

The following rules are laid down as actions in the law of bailments:—

A *Bailee*, who derives no benefit from his undertaking, is responsible only for gross negligence.

A *Bailor*, who alone receives benefit from the bailment, is responsible for slight neglect.

When the *bailment* is beneficial to both parties, the *bailee* must answer for ordinary neglect.

A special agreement of the *bailee* to answer for more or less, is in general, valid.

All *bailors* are answerable for actual fraud, even though the contrary be stipulated.

No *bailee* shall be charged for a loss by inevitable accident, or irresistible force, except by special agreement.

*Robbery by Force* is considered as irresistible; but a loss by private stealth, is presumptive evidence of ordinary neglect.

*Gross Neglect* is a violation of good faith.

No action lies to compel performance of a *naked contract*.

The negligence of a servant acting by his master's orders, expressed or implied, is the negligence of the master.

**Bairman**, a poor insolvent creditor, left bare and naked.

**Balenger**, a barge or water-vessel, and also a man of war.

**Balistarius**, a cross-bow man.

**Balivo Amovendo**, a writ to remove a *bailiff* from his office, for want of sufficient land in the bailiwick.

**Ballance** or **Balance**, of trade, a term applied to the money balance to be paid by one nation, trading and carrying on business with another. So far as the articles mutually exported and
and imported pay for each other, there is no balance; but on which ever side the exports fall short in their amount, that nation is said to have the balance against it and vice versa.

BALLAST, gravel or sand thrown into the hold of a ship, to enable her to carry a sufficient quantity of sail, without oversetting. All ships and vessels taking in ballast in the river Thames, shall pay to the corporation of the Trinity-house for all ballast demanded, after the rates following. For every ton, consisting of twenty hundred weight carried to any ship in the coal trade 1s. For every ton carried to any other British ship 1s. 3d. For every ton carried to any foreign ship 1s. 7d. The trinity-house shall employ the ballast-men, and regulate them; and their lighters are to be marked, so that their tonnage may be clearly ascertained, on pain of forfeiting 10l. 6 Geo. II. c. 29.

BAN, a public notice, summons, or edict; it is most especially used in the publication of intended marriages, which must be done on three several Sundays previous to the marriage, that if any can shew just cause against such marriage they may have an opportunity to make their objections.

BANE, destruction, as he who is the cause of another man's death is said to be le bane, that is a malefactor. Bract. lib. 2. tract 8. c. 1.

BANERET, is a knight made in the field, with the ceremony of cutting of his standard, and making it a kind of a banner; which is deemed so honourable, that they are allowed to display their arms in the king's army as barons do, and may bear arms with supporters.

BANISHMENT, is a forsaking or quitting of the realm; there are two kinds of it, one voluntary called abjuration, and the other upon compulsion, for some offence.

By the habeas corpus act, S1 Ch. II. c 2. no subject of this realm, who is an inhabitant of England, Wales, or Berwick, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, or place beyond the seas, where they cannot have the protection of the common law; for by it, every Englishman may claim a right to abide in his own country so long as he pleases, and not be banished or driven from it but by sentence of the law. See Transportation.

BANK, in the common law, is a seat or bench of judgment.
Bank le roy, the king's-bench; bank le common pleas, the bench of common pleas.

BANK OF ENGLAND, is the first bank in point of consequence in Europe; it is managed by a governor and directors, established by act of parliament; with funds for maintenance thereof, appropriated to such persons as were subscribers; and the capital stock, which is enlarged by several statutes, is exempted from taxes. The banking system is founded on the principle of depositing a value, which is forthcoming and answerable for written promises issued, called notes, and which pass from hand to hand as a circulating medium, or as the coin of the country.

BANKRUPT, a trader whom misfortune or extravagance has induced to commit an act of bankruptcy. The benefit of the bankrupt laws is allowed to none but actual traders, or such as buy and sell, and gain a livelihood by so doing.

Requisites to constitute a trading, the merchandising, or buying, and selling, must be of that kind, whereby the party gains a credit upon the profits of an uncertain capital stock. Manufacturers, or persons purchasing goods or raw materials to sell again under other forms, or ameliorated by labor, as bakers, brewers, butchers, shoemakers, smiths, tanners, tailors, &c. are also within the statutes.

The following description of persons, are not within the statutes of bankruptcy, viz. proprietors or persons having an interest in land, if buying and selling to whatever extent, for the purposes of disposing merely of the produce and profits of such land; graziers and drovers; owners of coal-mines working and selling the coals; owners or farmers of allum-rocks; farmers who make cheeses for sale, or those who sell cider made from apples of their own orchard. In all such cases, and others of a similar nature, where the several materials are purchased, and even some kind of manufacture exercised; yet as this is the necessary and customary mode of receiving the benefit arising from the land, such persons are not held to be traders within the statutes; nor are persons buying and selling bank stock or government securities. Buying or selling only, will neither singly constitute trading; neither will a single act of buying and selling; or drawing or redrawing bills of exchange merely for the purpose of raising money for private occasions, and not with a view to gain a profit upon
upon the exchange. Being a part-owner in a ship, barge, or waggon, does not constitute a trader; nor holding a share or interest in a joint stock with others who trade, unless he share in the profit and loss upon the disposition of the capital. The merchandise must also be general, and not in a qualified manner only, as victuallers or innkeepers, schoolmasters, commissioners of the navy who victual the fleet by private contract, the king's butler, steward, or other officers; officers of excise or custom, butlers of the armies, butlers, stewards of inns of court, clergymen, &c. as acting in such capacities merely, are not liable to be made bankrupts; the buying and selling in such cases not being general but in the exercise of particular employments. Neither, upon the same principle, are receivers of the king's taxes, or persons discounting exchequer bills. If the parties above enumerated however, being themselves within the bankrupt laws in any other respect, they will be liable to their operation, although they should evidently not profit by trading, or such trading should be illegal; although the trading should not be wholly carried on in England, buying only in England and selling beyond sea. Any person, native, denizen, or alien, residing in any part of the British dominions, or in foreign countries, though never a resident trader in England, yet if he be a trader, and coming to England commit an act of bankruptcy, he will be subject to the bankrupt laws.

No one can be a bankrupt, on account of any debt, which he is not compellable by law to discharge, as infants or married women. And if a single woman be a trader, and committing any act of bankruptcy, afterwards marry, a commission issued against her after such marriage, cannot be supported. But according to the custom of London, where a married woman is sole trader, she is held liable to a commission of bankruptcy like a feme sole.

Acts of bankruptcy. Departing the realm. This must be done with intent to defraud or delay creditors; when it appears that there was no such intention, it will not be a departure within the meaning of the statutes. 7 T. R. 509.

Departing from the dwelling-house. Such departure must also be with intent to defraud and delay creditors; for the departure with an intent to delay, has been held insufficient, without an actual delay of some creditors. Str. 803.
Beginning to keep the house, the being denied to a creditor who calls for money; but an order to be denied, is not enough without an actual denial, and that also to a creditor who has a debt demandable at the time. 5 T. R. 575.

Voluntary arrest, not only for a fictitious debt, but even for a just one, if done with the intent to delay creditors, is an act of bankruptcy.

Suffering outlawry, with an intent to defraud the creditors, but this will not make a man a bankrupt, if reversed before issuing a commission, or for default of proclamations after it, unless such outlawry were originally fraudulent.

Escaping from prison. Being arrested for a just debt of 100l. or upwards, and escaping against the consent of the sheriff.

Fraudulent procurement of goods to be attached or sequestered. A fraudulent execution, though void against creditors, is not within the meaning of the words, attachment, or sequestration, used in the statute; because they relate only to proceedings used in London, Bristol, and other places.

Making any fraudulent conveyance. Any conveyance of property, whether total or partial, made with a view to defeat the claims of creditors, is a fraud, and if it be by deed, is held to be an act of bankruptcy.

A conveyance by a trader of all his effects and stock in trade by deed, to the exclusion of any one or more of his creditors, has been ever held to be an act of bankruptcy.

A mortgage (amongst other things) of all the stock in trade of a tradesman, was held to be an act of bankruptcy, as being an assignment of all the stock in trade, without which he could carry on no business.

A conveyance by a trader, of part of his effects to a particular creditor, carries no evidence whatever of fraud, unless made in contemplation of bankruptcy.

Being arrested for debt, lying in prison two months or more, upon that or any other arrest, or detention in prison for debt, will make the party a bankrupt, from the time of the first arrest: but where the bail is fairly put in, and the party at a future day surrenders in discharge of his bail, the two months are computed from the time of the surrender.

Of proceedings under a commission. The lord chancellor is empowered
powered to issue a commission of bankrupt, and is bound to grant it as matter of right. By 5 Geo. II. c. 30. no commission can issue, unless upon the petition of a single creditor, to whom the bankrupt owes a debt which shall amount to 100l. the debt of two or more, being partners, shall amount to 150l. and of three or more to 200l.

If the debt against the bankrupt amount to the sum required, it is not material, though the creditor should have acquired it for less.

If a creditor to the full amount, before an act of bankruptcy committed, receive after notice of the bankruptcy a part of his debt, such payment being illegal, cannot be retained, and the original debt remains in force, and will support a commission.

The debt must be a legal and not an equitable one, and if the legal demand be not in its nature assignable, the assignee cannot be the petitioning creditor, as the assignee of a bond.

If the creditor, for a debt at law, have the body of his debtor in execution, he cannot at the same time, sue out a commission upon it; that being, in point of law, a satisfaction for the debt.

Of opening the commission. When the commissioners have received proof of the petitioning creditor's debt, the trading, and act of bankruptcy, they declare and adjudge the party a bankrupt. They are authorized to issue a warrant under their hands and seals, for the seizure of all the bankrupt's effects, books, or writings, and for that purpose to enter the house, or any other place belonging to the bankrupt.

Such debts only can be proved under a commission, as were either debts certainly payable, and which existed at the time of the bankruptcy, or which, although originally contingent, yet, from the contingency happening before the bankruptcy, were become absolute. In every case the amount of the debt must be precisely ascertained.

Time and method of proving. Creditors were formerly precluded from proving after four months, but the court now, except in cases of gross negligence, allows them to come in at any time, whilst anything remains to be disposed of. The usual proof required, is the oath of the creditor himself, either in person, or by affidavit, if he live remote from the place of meeting, or reside in foreign parts. 5 Geo. II.
Corporations, or companies, are generally admitted to prove by a treasurer, clerk, or other officer duly authorized.

Of the assignees. Immediately after declaration of the bankruptcy, the commissioners are to appoint a time and place for the creditors to meet and choose assignees, and are directed to assign the bankrupt's estate and effects to such persons as shall be chosen by the major part in value.

The powers and duties of assignees are principally those of collecting the bankrupt's property, reducing the whole into ready money, and making distribution as early as possible. One assignee is not answerable for the neglect of another. Assignees, if they act improperly, are not only liable at law to the creditors for a breach of trust, but may be removed on account of misbehaviour, &c. by petitioning the lord chancellor. Upon the removal of an assignee, he is directed to join with the remaining one, in assignment to the latter and new assignee.

Provisions for wife, children, &c. By the statute of Eliz. the commissioners may assign any lands, &c. that the bankrupt shall have purchased jointly with his wife, and the assignment shall be effectual, against the bankrupt, his wife, or children; but this shall not extend to conveyances made before the bankruptcy bona fide, and not to the use of the bankrupt himself only, or his heirs, and where the party to the conveyance are not privy to the fraudulent purposes to deceive the creditors.

Examination of the bankrupt. By the 5th Geo. II. the commissioners are empowered to examine the bankrupt, and all others, as well by parole, as by interrogations in writing. The said statute requires the bankrupt to discover all his estate and effects, and how, and to whom, and in what manner, on what consideration, and at what time, he has disposed of it; and all books, papers, and writings, relative thereto, of which he was possessed or interested, or whereby he or his family may expect any profit, advantage, &c. and on such examination he shall deliver up to the commissioners all his effects, (except the necessary wearing apparel of himself, his wife, and children,) and all books, papers, and writings relating thereto.

With respect to his privilege from arrest. By the above act, the bankrupt shall be free from all arrest in coming to surrender, and from his actual surrender to the commissioners for and during the
the forty-two days, or the further time allowed to finish his examination, provided he was not in custody at the time of his surrender.

Books and papers. By 5 Geo. II. c. 30, the bankrupt is entitled, before the expiration of the forty-two days, or enlarged time, to inspect his books and papers, in the presence of the assignees, or some person appointed by them, and make such extracts as he shall deem necessary.

Power of commissioners in case of contumacy. The statutes empower the commissioners to enforce their authority by commitment of the party, in the following cases: Persons refusing to attend on the commissioners' summons; refusing to be examined, or to be sworn, or to sign and subscribe their examination, or not fully answering to the satisfaction of the commissioners.

Of the certificate. By the 5 Geo. II. a bankrupt surrendering, making a full discovery, and in all things conforming to the directions of the act, may with the consent of his creditors obtain a certificate. If the commissioners certify his conformity, and the same be allowed by the lord chancellor, his person, and whatever property he may afterwards acquire, will be discharged and exonerated, from all debts owing by him at any time he became a bankrupt. But no bankrupt is entitled to the benefit of the act, unless four parts in five, both in number and value of his creditors, who shall be creditors for not less than 20l. respectively, and who shall have duly proved their debts under the commission, or some other person duly authorized by them, shall sign the certificate.

Of the dividends. The assignees are allowed four months from the date of the commission, to make a dividend; and should apply to the commissioners to appoint a meeting for that purpose, or they may be summoned by them, to shew cause why they have not done so.

Allowance to the bankrupt. Every bankrupt surrendering, and in all things conforming to the directions of the act, shall be allowed five per cent. out of the net produce of his estate, provided after such allowance, it be sufficient to pay his creditors ten shillings in the pound, and that the said five per cent. shall not in the whole exceed 200l. Should his estate, in like manner pay
12s. 6d. in the pound, he shall be allowed seven and an half per cent, so as not to exceed 250l. and if his estate pay 15s. in the pound, he shall be allowed ten per cent. so as not to exceed 500l. But the bankrupt is not entitled to such allowance, till after a second dividend, nor can he be entitled to it till he has received his certificate.

Of the surplus. The commissioners are, on request of a bankrupt, to give a true and particular account of the application and disposal of his estate, and to pay the overplus, if any, to the bankrupt.

Of superseding commissions. Commissions may be superseded, for the want of a sufficient debt of the petitioning creditor, or because he was an infant, or for want of sufficient evidence of the trading or act of bankruptcy, or in cases of fraud, or by agreement or consent of the creditors.

Joint commissions. Partners are liable to a joint commission, or individually, against each; but a joint and separate commission cannot, in point of law, be concurrent. A joint commission must include all partners; if there be three partners, and one of them an infant, there can neither be a commission against the three, nor against the other two.

Felony of bankrupts. If any person, who shall be duly declared a bankrupt, refuse, within forty-two days, after notice left at his place of abode, and in the London Gazette, to surrender himself to the commissioners, and to fully disclose and discover all his estate and effects, real and personal, and all transfers thereof, and also all books, papers, and writings, relating thereto; and deliver up to the said commissioners, all such estate and effects, books, papers, &c. as are in his power (except his necessary wearing apparel, &c.) or in case he shall conceal, or embezzle, any part of his estate, real or personal, to the value of 20l. or any books of accounts, papers, or writings, relating thereto, with intent to defraud his creditors, being lawfully convicted thereof, by judgment or information, shall be adjudged guilty of felony, without benefit of clergy, and his goods divided amongst his creditors. 5 Geo. II. c. 30.

BANKS DESTROYING. If any person shall wilfully or maliciously break, throw down, damage, or destroy any banks,
floodgates, sluices, or any other works, or do any other wilful hurt or mischief thereto, he shall be guilty of felony, and transportation for seven years. 4 G. III. c. 12. s. 5.

BANNITUS, the form of expulsion of any member from the university of Oxford.

BANNITUS, an outlaw, or banished man.

BAR, a plea, or peremptory exception of a defendant, sufficient to destroy the plaintiff's action.

In real actions, a general release, or fine, may be pleaded to bar the plaintiff's title. In personal actions, an accord, arbitration, conditions performed, non-age of the defendant, or the statute of limitation may be pleaded in bar.

In criminal cases, there are especially four pleas in bar, which go to the merits of the indictment, and give reason why the prisoner ought not to answer it, nor be tried upon it; as a former acquittal, a former conviction, (though perhaps no judgment were, or will be given,) a former attainder, and a pardon.

BARCARIUM, a sheep-cote, also a sheep-walk.

BAR-FEE, is a fee of twenty pence, which every prisoner acquitted of felony pays to the gaoler.

BARGAIN and SALE. See Contract.

BARON, a degree of nobility next to a viscount, but in point of antiquity the highest. In the house of peers, dukes, marquisses, earls, viscounts, and barons, are all equals as members, whence they are collectively called a house of peers, or equals; though, in other respects, they claim and enjoy certain honours and distinctions, peculiar to their respective ranks.

The original barons by writ, Camden refers to king Hen. III. and barons by letters patent, or creation, commenced 11 Rich II. to these is added a third kind of barons, called Barons by Tenure. The chief burgesses of London were in former times barons, before there was a lord-mayor. Hen. III. The earl palatines and marches of England had anciently their barons under them; but no barons, except those who held immediately of the king, were peers of the realm.

BARON and FEME, are husband and wife by our law, and are adjudged but one person.

BARONET, a dignity, or degree of honour next after barons, having precedence of all knights, except knights banneret. They

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are created by letters patent, and the dignity usually descends to the issue male.

BARONS OF THE EXCHEQUER. See Exchequer.

BARONY, is that honour and territory which gives title to a baron.

BARRASTER, or BARRISTER, a counsellor learned in the law, admitted to plead at the bar, and there to take upon him the protection and defence of clients. Barristers who constantly attend the king's-bench, &c. are to have the privilege of being sued in transitory actions, in the county of Middlesex; but it hath been questioned, whether an action of debt lies for their fees unless it be upon special retainer; for the fees to a counsellor, are not given as a salary or hire, but as a mere gratuity, which a barrister cannot demand, without doing wrong to his reputation. Davis 23.

BARRATOR, or BARRETER, a person who is a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country.

A common barrator, is said to be a most dangerous oppressor in the law; for he oppresses the innocent by colour of law, which was made to protect them. 8 Rep. 37.

If they are common persons, and found guilty on being indicted as public disturbers of the peace, the usual punishment is by fine and imprisonment, and also by binding them to their good behaviour; but if they are of any profession relating to the law, they may be further punished, by being disabled to practice for the future. 4 Black. 134.

BARRATRY, the act of the barrator, see above. And signifies also, where the master of a ship or the mariners defraud the owners or insurers, whether by running away with the ship, sinking her, deserting her, or embezzling the cargo. See Marine Insurance.

BARRIERS, bars or rails, which formerly separated the spectators, from those practising martial exercises. Also places of defence on the frontiers of kingdoms.

BARRISTER. See Barraster.

BARTER, an exchange of one species of goods for another, which was the original method of trading before money was in use; but although the invention of money has not altogether put an
an end to barter, yet it has entirely prevented it from appearing in its real form in the books of merchants; as each article is there stated in its money value, and each sale is supposed to be paid for, in the circulating medium of the country, even in cases where no money whatever is made use of in the transaction.

BARTON, a word used in Devonshire for the demesne lands of a manor, sometimes the manor-house itself, and in some places for outhouses and fold-yards.

BAS CHEVAIERS, low and inferior knights by tenure of a bare military fee, as distinguished from banerets, the superior knights: hence our simple knights, are called knights bachelors.

BASE COURT, an inferior court not of record, as the court baron.

BASE ESTATE, is that which base tenants have in their lands; and base tenants are those who perform villainous services to their lords.

BASELS, a coin abolished by Hen. II. anno 1158.

BASTARD, one who is born of any woman not married, so that his father is not known by order of the law. A bastard, by our English laws, is one, that is not only begotten, but born out of lawful matrimony. As all children born before matrimony are bastards, so are all children born so long after the death of the husband, that by the usual course of gestation they could not be begotten by him.

If a man marry a woman grossly big with child by another, and within three days afterwards she be delivered, the issue is no bastard. 1 Danv. Abr. 729.

If a child be born within a day after marriage between parties of full age, if there be no apparent impossibility, that the husband should be the father of it, the child is no bastard, but supposed to be the child of the husband. 1 Rot. Abr.

If a bastard die without issue, though the land cannot descend to any heir on the part of the father, yet to the heir on the part of the mother (being no bastard) it may; because he is of the blood of the mother, but he has no father. 2 Rotl. Abr.

If a bastard die intestate, leaving neither widow nor issue; the king is intitled to the personality. 2 Black. 505.

The incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs but of his own
own body; for being nullius filius, he is therefore of kin to no one, nor has he any ancestor from whom any inheritable blood can be derived. Salk. 66.

A bastard may be made legitimate, and capable of inheriting, by the transcendent power of an act of parliament. 1 Black. 459.

If any single woman be delivered of a bastard-child which shall be chargeable or likely to become chargeable; or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable; and shall in either of such cases, in an examination to be taken in writing, on oath, before one justice of the peace, of the county, &c. where such parish or place shall lie, charge any person with having gotten her with child; it shall be lawful for such justices, upon application made to him by the overseers of the poor of such parish, or one of them, or by any substantial householder of any extra parochial place; to issue out his warrant for the immediate apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other justices of the peace of such county, city, or town corporate: And the justice, before whom such person shall be brought, shall commit him to the common goal or house of correction, unless he shall give security to indemnify such parish or place, or shall enter into a recognizance, with sufficient security, upon condition to appear, at the next general quarter-sessions, or general sessions of the peace. 6 Geo. II. c. 31.

Though a bastard-child is a prima facie settled where born, yet this rule admits of several exceptions; as where a bastard is born under an order of removal, and before the mother can be sent to her place of settlement; or if a woman be delivered on the road in transitu, while the officers are conducting her, by virtue of an order of removal; or if the child be born in the house of correction; or in the house of industry of any hundred or district; or in a lying-in hospital, it shall follow the mother's settlement. 1 Sess. Cr. 33. 94. 2 Salk. 474. 13 Geo. III. c. 29. 20 Geo. III. c. 36.

BASTARD EIGNE, is a son born before marriage, whose parents afterwards intermarry, and by the civil law he is mulier, or lawful issue; but not by the common law. 2 Inst. 99.

BASTON, a staff or club, which also signifies one of the warden's
of the Fleets' servants, or officers who attend the king's courts with red staffs, for taking into custody those who are committed by the court.

BATABLE GROUND, litigious or debatable ground, such as the land which lay between England and Scotland when they were distinct kingdoms.

BATTLE, a trial by combat, which was anciently allowed of in our laws, where the defendant, in an appeal of murder or felony, might fight with the appellant; and make proof thereby, whether he were culpable or innocent. This mode of trial was used also in one civil case, namely, upon an issue joined in a writ of right. But as the writ of right itself is now disused, this course of trial is only matter of speculation. 3 & 4 Black. 377, 346.

BAWDY-HOUSE, a house of ill fame, kept for the resort and commerce of lewd people, of both sexes. The keeping a bawdy-house, comes under the cognizance of the temporal law, as a common nuisance, not only in respect of its endangering the public peace, but by drawing together dissolute and debauched persons, and promoting quarrels, but also in respect to its tendency to corrupt the manners of the people. 3 Inst. 205.

Any persons keeping a bawdy-house, gaming-house, or other disorderly house, are punishable, not only with fine and imprisonment, but also with sufficient infamous punishment, as to the court in discretion shall seem proper. 28 Geo. II. c. 19.

BEACON, a signal erected as a sea mark, for the use of mariners, or to give warning of the approach of an enemy. The corporation of the Trinity-house are empowered to set up any beacons, wherever they shall think them necessary; and if any destroy, or take them down, he shall forfeit 100l. or be ipso facto outlawed. 1 Black. 265.

BEAD, or BEDE, a prayer, or rather prompter in prayer. They are not allowed to be brought into England, or any superstitious things to be used here, under penalty of a praemunire. Stat. 13 Eliz. c. 2.

BEARERS, oppressors. Justices of assize shall enquire of, hear, and determine maintainors, bearers, and conspirators, and of those that commit champerty. 4 Ed. III. c. 41.

BEASTS OF CHACE, the buck, doe, fox, marten, and roe.

BEASTS OF THE FOREST, the hart, hind, boar, and wolf,
BEASTS AND FOWL OF WARREN, the hare, cony, pheasant, and partridge.

BÊDEHOUSE, an hospital, or alms-house, for bedesmen, or poor people, who prayed for their founders and benefactors.

BEER AND ALE. By ancient statutes, brewers could not raise the assize of beer and ale, but according to the price of the corn, whereof the malt was made, under penalty of being fined for the first, second, and third offences, and for the fourth they should suffer the pillory. But by 2 Geo. III. c. 14. strong beer may be reasonably advanced, without subjecting vendors to a prosecution. See Excise.

BEGGARS. See Vagrants.

BEHAVIOUR. See Good Behaviour.

BELLS. By a constitution of archbishop Winchelsea, the parishioners shall find, at their own expence, bells with ropes.

BELUNDITA, for BIDOWITA, an amerciament for shedding blood.

BENEFICE, is generally taken for all ecclesiastical livings, be they dignities, or other. All church preferments and dignities are benefices; but they must be given for life, not for years, or at will.

BENEVOLENCE, an aid given by the subjects to the king, as a voluntary gratuity, but in reality an extortion and imposition: this has, therefore, been carefully guarded against by several statutes, particularly by the declaration of rights, 1 Wil. st. 2. c. 2. it is insisted, that levying money for, or to the use of the crown, by pretence of prerogative, without grant of parliament, or for longer time, or in other manner than the same is or shall be granted, is illegal.

BENEFIT OF CLERGY. By stat. 3 Ed. I. c. 3. it is enacted, that for the scarcity of clergy in the realm of England, to be disposed of in religious houses, or for priests, deacons, and clerks of parishes, there should be a prerogative allowed to the clergy, that if any man that could read as a clerk were to be condemned to death, the bishop of the diocese might, if he would, claim him as a clerk; and he was to see him tried in the face of the court if he could read, or not, if the prisoner could read, then he was to be delivered over to the bishop, who should dispose of him in some places of the clergy as he should think meet; but if either the
the bishop would not demand him, or the prisoner could not read, then he was to be put to death.

By the common law a woman was not entitled to the benefit of clergy; but by 3 W. c. 9. s 6. a woman convicted, or outlawed, for any felony for which a man might have his clergy, shall, upon her prayer to have the benefit of this statute, be subject only to such punishment as a man would in a like case.

But every person (not being within orders) who has been once admitted to his clergy, shall not be admitted to it a second time, 4 Hen. VII. c. 13. and against the defendant's plea of clergy, the prosecutor may file a counter plea, alleging some fact, which in law deprives the defendant of the privilege he claims: as he was before convicted of an offence, and therefore not entitled to the benefit of the statute. Leach's Haw. 2. c. 33. s. 19. n.

In case of high treason against the king, clergy was never allowable.

When a person is admitted to his clergy, he forfeits all the goods he possessed at the time of the conviction. 2 H. H. 388. But immediately on his burning in the hand, he ought to be restored to the possession of his lands, 2 H. H. 388. It also restores him to his credit, and consequently enables him to be a good witness. 2 Haw. 361.

BEREGAROL, a tribute of barley.

BERGHMASTER, vulgarly BARMASTER and BARMER, a bailiff, or chief officer, among our Derbyshire miners, who, among other parts of his office, executes that of coroner.

BERGMOTH, or BERGHMOT, vulgarly BARMOTE, a court held for deciding pleas and controversies among the Derbyshire miners.

BERWICA, an hamlet, or village, appurtenant to some town, or manor.

BERWICK. The town of Berwick upon Tweed, though originally part of Scotland, is now clearly part of the realm of England; being represented by burgesses in the house of commons, and bound by all acts of the British parliament, whether specially named, or otherwise. The stat. 20 Geo. II. c. 42. declares, that where England only is mentioned in an act of parliament, the same, notwithstanding, hath been, and shall be, deemed to comprehend
prehend the dominion of Wales and the town of Berwick upon Tweed.

BERY, or BURY. The chief house of a manor, or the lord's seat.

BESAILE, a writ that lies where the grandfather was seized in his demesne as of fee, of any lands or tenements in fee simple, the day he died; and after his death a stranger abates, or enters the same day upon them, and keeps out his heir.

BESTIALS, all kinds of cattle.

BETACHES, laymen using glebe lands.

BEVERCHES, customary services done at the bidding of the lord, by his inferior tenants.

BID-ALE, or BID-ALL, the invitation friends to drink at some poor man’s house, who thereby hopes to receive some assistant benevolence from the guests for his relief.

BIDDING OF THE BEADS, a charge given by the priest to his parishioners to say some particular prayers, on a notice of the festivals in the following week.

BIDENTES, tags, or sheep of the second year; their wool being the first shearing, was sometimes claimed as an heriot to the king, on the death of an abbot.

BIGAMUS, one who marries two or more wives successively after each other’s death; or a widow.

BIGAMY, is where a person marries a second wife, the first being alive. By the stat. 1 Jac. 1. c. 11, it is enacted, that if any person or persons within his majesty’s dominions, being married, do marry any person or persons, the former husband or wife being alive, the person or persons so offending, shall suffer death, as in cases of felony. But it is provided, that nothing in this statute shall extend to any person or persons, whose husband or wife shall be continually remaining beyond seas by the space of seven years together, or whose husband or wife, shall absent himself or herself from each other, for seven years together; the one of them not knowing the other to be living within that time. Nor shall the said statute extend to any person or persons divorced by a sentence in the ecclesiastical court; nor to any person or persons, for or by reason of any former marriage had or made within age of consent.

BILANCUS
BILANCUS DEFERENDIS, a writ directed to a corporation, for the carrying of weights to such a haven, there to weigh the wools that any man is licensed to transport.

BILL, in law proceedings, is a declaration in writing, expressing either the wrong the complainant hath suffered by the party complained of, or some fault committed against some law or statute of the realm; and this bill is sometimes addressed to the lord chancellor, especially for unconscionable wrongs done to the complainant; and sometimes to others having jurisdiction, according as the law directs. It contains the fact complained of, the damages thereby sustained, and petition of process against the defendant for redress; and it is made use of in criminal as well as civil matters. In criminal cases, when a grand jury upon presentation, or indictment, finds the same to be true, they indorse on it billa vera; and thereupon the offender is said to stand indicted.

Many of the proceedings in the King's Bench are by bill, which was the ancient form of proceeding.

BILLS OF EXCEPTIONS TO EVIDENCE. See Exceptions.

BILLS OF EXCHANGE. A bill of exchange is an order or request in writing, addressed by one person to another, to pay a certain sum of money on demand, or at a time therein specified, to a third person, or to his order; or it may be made payable to bearer.

If a bill be made payable to bearer, it is assignable by delivery only; but if it be payable to order, it must be transferred by indorsement and delivery.

The person making or drawing the bill, is called the drawer; the person to whom it is addressed the drawee, who, when he has undertaken to pay the amount, is termed the acceptor. The person in whose favour the bill is drawn, is called the payee; but if he appoint some other person to receive the money, he is then termed the indorser, and the person so appointed the indorse.

No particular form is necessary in a bill of exchange; any order, or promise, which from the time of making it, cannot be complied with, or performed, without the payment of money, is a bill or note. Mod. 364.

A promissory note, or note of hand, is an engagement in writing, to pay a sum specified at the time therein limited, to a per-
son therein named, or sometimes to his order, or often to the bearer at large: this is also made assignable, and indorsable like a bill of exchange.

Any persons capable of binding themselves by a contract, may be parties to a bill of exchange, or other negotiable instrument, or be in any manner concerned in negotiating either of them. An infant therefore, or a married woman, (except in certain cases, as where by the custom of London she has the privilege of trading as a feme sole), as they are incapable of binding themselves by contract, cannot be parties to a negotiable instrument; yet such interest, negotiated by persons incapacitated, will nevertheless be valid as to all other competent parties. 2 Atk. 181.

Bills of exchange are either foreign or inland; foreign when drawn by a merchant residing abroad upon his correspondent in England, or vice versa; and inland, when both the drawer and the drawee reside in the kingdom. By 9 & 10. W. III. c. 17. & 3 & 4 Anne, c. 9. all distinctions between foreign and inland bills, as far as respect the custom of merchants, are removed; and the same principles of law are generally applicable to both. See Stamps.

Bills or notes must be certain, and not depend on any particular event or contingency. 3 Wils. 213.

If a bill or note be made in a foreign country, it must be conformable to the laws of that country, or it will not be valid.

If a bill or note be altered while in the hands of the payee, or any other holder, in any material instance, as date, sum, &c. without consent of the drawee, he will be discharged from his liability, although such bill or note may afterwards come into the hands of an indorsee not aware of the alteration; but in this case, if altered before acceptance or indorsement, the acceptor can take no advantage of the alteration; and the consent of any one of the parties to the alteration, will in general preclude him from taking all advantage of it. 4 T. R. 320.

If a bill be made with a proper stamp, and afterwards altered by the consent of the parties, though before negotiation, a new stamp is necessary, as it is a different contract. 5 T. R. 357. If however, there be a stamp of equal or superior value, the proper one may be affixed, on payment of 40s. before the instrument is due, and 10l. after it is due. But if there is not originally a stamp
stamp amounting to the requisite value, *the omission* can never be legally supplied. *Evans*, p. 6.

The acceptor of a bill, is by the custom of merchants as effectually bound by *his acceptance*, as if he had been the original drawer; and having once accepted it, he cannot afterwards revoke it. *Cro. Jac.* 308. See *Acceptance*.

The indorser of a bill is as liable as the first drawer; because the indorsement is in the nature of a new bill. *1 Salk.* 125. To indorse a bill, with a fictitious name, is forgery, though such indorsement be useless.

A *presentment*, either for payment or acceptance, must be made at seasonable hours. In case a *bill* be not *regularly paid*, the holder has a right to recover not only the principal, but also in certain cases costs and damages.

*Notice* is that information, which the holder of a negotiable instrument is bound to give to all the antecedent parties. If the drawee refuse to accept, or having accepted, if he refuse payment, or if he offer an acceptance varying from the bill; in either of the above cases *the bill is dishonoured*; and the holder, in case of neglect to communicate notice within a reasonable time, will not be at liberty to resort to the other parties; who by such negligence, will be discharged from their respective obligations. *Bur.* 2670.

*Notice* of conditional or partial acceptance should be given to the other parties to the bill, by the *holder* in default of payment; for if under these circumstances a general notice of non-acceptance, be given to any of the parties, omitting to mention in such notice, the nature of the acceptance offered, the acceptor is discharged, by this act of the holder from his acceptance. *1 T. R.* 182.

A *protest* is an act of a notary public, stating that a bill has been presented for acceptance or for payment, and refused; and declaring that the acceptor, indorsers, &c. shall be liable for damages, &c. and to this instrument all foreign courts give entire credit. In the first instance, the notary, marks or *notes* the minute of refusal on the bill itself, and afterwards the instrument is drawn out and attested under his hand and seal. The want of a *protest*, can in no case be supplied by noting, which is a mere preparatory
preparatory minute, of which the law takes no cognizance as distinguished from a protest.

If there be no notary resident at or near the place, the bill must, when payable, be protested by some substantial resident, in the presence of two or more witnesses, and should in general be made at the place where payment is refused; but when a bill is drawn abroad, directed to the drawee at Southampton or London, or any other place, requesting him to pay the payee in London, the protest for non-acceptance of such bill, may be made either at Southampton or London.

Notice in case of foreign bills when to be given. Notice should be given on the day of refusal to accept, if any post or ordinary conveyance set out on the day, and if not by the next earliest conveyance. 4 T. R. 174.

An usance is generally understood to mean only a month. Molloy 207. 1 Shaw 217. Instead of an express limitation by months or days, we continually find the bills drawn or payable at Amsterdam, Rotterdam, Hamburgh, Altona, Paris, or any other place in France, Cadiz, Madrid, Bilboa, Leghorn, Genoa, or Venice, limited by the usance, that is the usage between those places and this country.

An usance between this kingdom and Amsterdam, Rotterdam, Hamburgh, Altona, Paris, or any place in France, is one calendar month from the date of the bill; an usance between us and Cadiz, Madrid, or Bilboa, two; and an usance between us and Leghorn, Genoa, or Venice, three. A double usance is double the accustomed time; an half usance, half. Upon an half usance, if it be necessary to divide a month, the division, notwithstanding the difference of the length of months, shall contain fifteen days. Blag. 13.

BILL-BANK, is a note of obligation signed on behalf of the company of the bank of England, by one of the cashiers, for value received; or it is an obligation to pay on demand, either to the bearer or to order.

BILL OF ENTRY, an account of the goods entered at the custom-houses both inwards and outwards. In this bill must be expressed, the merchant exporting or importing, the quantity of merchandizes, and the divers species thereof, and whither or whence transported.
BILL OF HEALTH. See Quarantine.

BILL OF LADING, a memorandum, signed by masters of ships, acknowledging the receipt of the merchant goods, &c. Of this there are usually three parts; one kept by the consignor, one sent to the consignee, and one kept by the captain.

BILLS, NAVY, issued by the navy board, for the payment of the various contractors for stores for the navy, dock-yards, &c.

BILL OF PARCELS, an account given by the seller to the buyer, containing the particulars of the sort and prices of the goods bought.

BILL OF SALE, a solemn contract under seal, whereby, a man passes the right or interest that he hath in goods and chattels. By the statute 13 Eliz. c. 5. all conveyances of lands, goods, and chattels, to avoid the debt or duty of another, shall, as against the party whose debt or duty is so endeavoured to be avoided, be utterly void; except grants made bona fide, and on good (which is constructed a valuable) consideration.

BILL OF STORE, a licence granted at the custom-house to merchants, to carry such stores, and provisions as are necessary for their voyage, custom free.

BILL OF SUFFERANCE, a licence granted to a merchant at the custom-house, suffering him to trade from one port to another, without paying custom.

BILLS VICTUALLING, issued by the victualling-board, in payment of contracts made for victualling the navy. They are like navy-bills payable at 90 days, with an interest, of three-pence halfpenny per day on each 100l.

BILLET, bullion of gold or silver in the mass before it is coined.

BILLET-WOOD, must be three feet and four inches longer, and seven inches and an half in compass; any under this size shall be forfeited to the poor. Stat. 43 Eliz.

BILLINGSGATE-MARKET, is to be kept every day, and toll is appointed by statute: All persons buying fish in this market, may sell the same in any other market by retail; none but fishmongers shall sell them in shops. If any person shall buy any quantity of fish at Billingsgate to be divided into shares amongst fishmongers or other persons, or any fishmonger shall ingross the market, they incur a penalty of 20l. And fish imported by foreigners,
reigners (except protestant inhabitants of England), shall be forfeited, and the vessels. And no fish (except stock-fish and live eels) caught by foreigners (except protestant inhabitants of England), shall be imported in any foreign vessel, not being wholly English property, under penalty of forfeiting the vessel and fish. Provided that nothing be construed to prohibit the importation of anchovies, sturgeon, botarjo, or cavear, nor selling of mackarel before and after divine service of a Sunday.

BILLUS, a stick or staff, which in former times, was the only weapon for servants.

BISHOP, signifies an overseer or superintendent; so called from that watchfulness, care, charge, and faithfulness, which by his place and dignity he hath, and oweth to the church.

An archbishop, is the chief of the clergy in his province, who next and immediately under the king hath supreme power, &c. in all causes and things ecclesiastical; and has the inspection of all the bishops of that province. He hath also his own diocese, where he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal. As archbishop, upon receipt of the king's writ, he calls the bishops and clergy of his province to meet in convocation: To him all appeals are made from inferior jurisdictions within his province. During the vacancy of any see in his province, he is guardian of the spiritualities thereof. If the archiepiscopal see be vacant, the dean and chapter are the spiritual guardians. The archbishop is entitled to present by lapse, to all the ecclesiastical livings, in the disposal of his diocesan bishops, if not filled within six months. And he has a customary prerogative, when a bishop is consecrated by him, to have the next presentation to such dignity or benefice in the bishop's disposal, as the archbishop shall choose; which is therefore called his option. 1 Black. 380. The archbishops may retain and qualify eight chaplains, whereas a bishop can only qualify six.

Bishops are elected by the dean and chapter; in order whereunto, when a bishop dies or is translated, the dean and chapter, certify the king thereof in chancery; upon which the king issues a licence to them to proceed to an election, called a conge d'élire; and with it sends a letter missive, containing the name of the person whom they shall elect; which if they shall refuse to do, they incur the penalty of a præmature.

A bishop
A bishop must be full thirty years of age when consecrated.

A bishop hath his consistory court, to hear ecclesiastical causes; and is to visit the clergy, &c. He consecrates churches, ordains, admits, and institutes priests; confirns, suspends, excommunicates, grants licences for marriage, makes probates of wills, &c; Co. Lit. 96. Rol. Abr. 230.

BISHOPRIC, the diocese of a bishop.

BISSEXTILE, called leap-year, because the sixth day before the kalends of March is twice reckoned, viz. on the 24th and 25th February: so that the bissextile year, hath one day more than other years.

BLACK ACT, is so called, having been occasioned by some devastations committed near Watham in Hants, by persons in disguise, or with their faces blacked; to prevent which it is enacted by 31 Geo. II. c. 42. that persons hunting armed and disguised, and killing or stealing deer, or robbing warrens, or stealing fish out of any river, &c. or any person unlawfully hunting in his majesty's forests, or breaking down the head of any fish-pond, or killing, &c. of cattle, or cutting down trees, or setting fire to house, barn, or wood, or shooting at any person, or sending anonymous letters, or letters signed with a fictitious name, demanding money, &c. or rescuing such offenders; are guilty of felony without benefit of clergy.

BLACK BOOK, is a book in the exchequer.

BLACK LEAD, every person who shall unlawfully break into any wad-hole of wad, or black cauke, commonly called black lead, or shall unlawfully take and carry away from thence any wad, black cauke, or black lead, or shall aid or employ others so to do shall be guilty of felony. 25 Geo. II. c. 10.

BLACK MAIL, signifies, in the counties of Cumberland, Northumberland, Westmorland, and the bishopric of Durham; a certain rate of money, corn, cattle, or other consideration, paid to some inhabitants near the borders, to be protected from a band of robbers called moss troopers.

Black mail, also signifies the rents formerly paid in provisions of corn and flesh.

BLACK-ROD, or gentleman usher of the black rod, is chief gentleman or usher to the king. He hath also the keeping of the chapter-house door, when a chapter of the order of the garter is sitting;
sitting; and, in the time of parliament, attends on the house of peers.

BLACKWELL HALL, a repository and market for woollen goods in Basinghall-street, London, established, by 8 and 9 Wm. III. c. 9, which directs that the public market be held there every Thursday, Friday, and Saturday; from 8 to 12 in forenoon, and from 2 to 5 in the afternoon, and no other day or hour.

BLADARIOUS, a corn-monger, mealman, or corn-chandler.

BLANCH FIRMES, anciently the crown rents, were reserved in libris abis or blanch firmes.

BLANK-BAR, the name of a plea in bar, which in action of trespass is put in to compel the plaintiff, to assign the certain place where the trespass was committed.

BLANK FARM, where the rent is paid in silver, not in cattle.

BLANKS, in law proceedings, void spaces left by mistake or sometimes intended to be filled up at a future time. Such blanks are a good cause of demurrer.

BLASPHEMY, all blasphemies against God; all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scriptures, or exposing any part of them to ridicule, are punishable by fine, imprisonment, and such corporal punishment, as to the court shall seem meet, according to the heinousness of the crime. 1 Hau. 6.

BLENCH, is the title of a kind of tenure of land, as to hold land in blench; is by payment of a sugar-loaf, a beaver-hat, a couple of capons, and such like.

BLOODSHED, the fine imposed for shedding blood, was called, bloodwit.

BLOODWIT, or BLOODWITE, a customary fine paid as a composition and atonement, for the shedding or drawing blood, for which the place was answerable, if the party were not discovered.

BLOODY HAND, signifies the apprehension of a trespasser in the forest against venison with his hands or other parts bloody.

BOCKLAND, a possession or inheritance held by instruments in writing; descendible to all sons, and therefore called gaivel kind; devisable also by will. Spelman on Feuds, c. 5.
BOILARY, or BULLIARY OF SALT, a salt-house, or salt-pit, where salt is boiled.

BOLTING, a term of art formerly used in Gray's Inn, whereby is meant private arguing of cases.

BONA FIDE. That is done bona fide, which is done really, with a good faith, without fraud or deceit.

BONAGHT, or BONAGHTY, an exaction in Ireland, imposed at the will of the lord, for relief of the knights called bonaghti, who served in the wars.

BONA NOTABILIA, are such goods as a party dying, has in another diocese, besides that wherein he dies, amounting to 5l. in the whole, which, whoever has, his will must be proved before the archbishop of the province; unless, by composition or custom, other dioceses are ordered to do it, where bona notabilia are rated at a greater sum.

Debts owing to the deceased are bona notabilia, as well as goods in possession; and they shall be bona notabilia in that diocese where the bonds or other specialties are, and not where the debtor inhabits. But bills of exchange, or other debts by simple contract, shall be bona notabilia, in that place where the debtor is.

1 Roll. Abr. 909.

BONA PATRIA, an assize of countrymen, or good neighbours: when twelve or more are chosen out of the country to pass upon an assize; and they are called juratores, because they swear judicially, in the presence of the party.

BOND, a bond, or obligation, is a deed whereby the obligor, or person bound, binds himself, his heirs, executors, and administrators, to pay a certain sum of money, or do some other act; and there is generally a condition added, that if he do perform such act, the obligation shall be void, or else remain in full force; as performance of covenants, standing to on award, payment of rent, or repayment of a principal sum of money, with interest, which principal sum is usually half the sum specified in the bond.

2 Black, 540.

All persons who are enabled to contract, and whom the law supposes to have sufficient freedom and understanding for that purpose, shall bind themselves in bonds and obligations. 1 Roll. Abr. 540.

If the condition of a bond be impossible at the time of making
it, if it be to do a thing contrary to some rule of law, or to do a thing that is malum in se, the obligation itself is void.

The bond of a feme covert is void, as is that of an infant. If a person be illegally restrained of his liberty, and during such restraint enter into a bond to a person who causes the restraint, the same may be avoided for duress of imprisonment. 2 Inst. 482.

To avoid controversies, three things are necessary to making a good obligation, signing, sealing, and delivery.

A bond, on which neither principle nor interest has been demanded for twenty years, will be presumed in equity to be satisfied.

If several obligors are bound jointly and severally, and the obligee makes one of them his executor, it is a release of the debt, and the executor cannot sue the other obligor. 8 Cor. 136.

If one obligor make the executor of an obligee his executor, and leave assets, the debt is deemed satisfied; for he has power by way of retainer to satisfy the debt.

A release to one obligor is a release to all, both in law and equity. 1 Atk. 294.

BOND, POST OBIT, one and the main condition of which is, that it only becomes payable after the death of some person, whose name is therein specified. The death of any person being uncertain as to time, the risque attached to such bonds, frees them from the shackles of the common law of usury. It has been determined, that bonds bought for half their value did not amount to usury, on account of the risque with which they were attended.

BOOKS. By 8 Anne, c. 19. the author of any book, and his assigns, shall have the sole liberty of printing and reprinting the same for twenty-one years, to commence from the day of the first publication thereof, and no longer; except that if the author be living, at the expiration of the said term, the sole copyright shall return to him for other fourteen years: and if any other person shall print, or import, or sell or expose it to sale, he shall forfeit the same, and also one penny for every sheet thereof, found in his possession. But this shall not expose any person to the said forfeitures, unless the title thereof shall be entered in the register book of the company of stationers.

By 41 Geo. III. eleven copies of each book, on the best paper shall, before publication, be delivered to the warehouse-keeper of the
the company of stationers, for the use of the Royal Library, the libraries of the two universities in England, the four universities in Scotland, the library of St. John College, the library belonging to the college of advocates in Edinburgh, the library of Trinity College, Dublin, and the King's Inns, Dublin, on pain of forfeiting the value thereof, and also 51.

By Stat. 34 Geo. III. c. 20, and 41 Geo. III. c. 107. persons importing for sale books first printed within the united kingdom, and reprinted in any other, such books shall be seized and forfeited; and every person so exposing such books to sale, for every such offence shall forfeit the sum of 10l. The penalties not to extend to books not having been printed for twenty years.

By the act of union, 40 Geo. III. c. 67. all prohibitions and bounties on the export of articles (the produce and manufacture of either country) to the other, shall cease; and a countervailing duty of two-pence for every pound weight avoidupoise of books, bound or unbound, and of maps or prints, imported into Great Britain, directly from Ireland, or which shall be imported into Ireland from Great Britain, is substituted.

BOOTING, or BOTING CORM, certain rent-corn so called.

BORDAGIUM, a sort of tenure, subjecting a man to the meanest services; he could not sell his house, without leave of the lord.

BORDARII, or BORDUANNI, boors, husbandmen, or cottagers, who had a bord, or cottage, with a small parcel of land allowed to them, on condition they should supply the lord with poulty and eggs, and other small provisions.

BORDEL, a licentious house, the common habitation of prostitutes. See Bawdy-house and Brothel-houses.

BORD-HALFPENNY, is a small toll paid in fairs and markets, for setting up tables, boards, and stalls, for sale of wares.

BORD-LANDS, the lands which lords keep in their hands for the maintenance of their board, or table.

BORDLODE, the quantity of provision which the borderii, or bordmen, pay for their bordlands; also a service required of the tenant, to carry timber out of the woods of the lord to his house.

BORD-SERVICE, is a tenure of bord-lands, by which some lands
lands in the manor of Fulham, and elsewhere, are held of the bishop of London; and the tenants now pay sixpence per acre, in lieu of finding provisions for their lord's board, or table.

BOROUGH, or BOROW, is now understood to be a town, either corporate or not, that send burgesses to parliament. 1 Black. 114.

BOROUGH ENGLISH, is a custom in divers ancient boroughs, of the youngest son succeeding to the burgage tenement, on the death of his father. 2 Black. 83.

BOROUGH GOODS, devisable.

BOROUGH HOLDERS, or BORSHOLDERS, are the same officers as those called borough-heads, or headboroughs.

BORREL-FOLK, country people.

BORROWING, when money, corn, grain, gold, or any other commodity, merely esteemed according to its price, is borrowed, it is repaid by returning an equal quantity of the same thing, or an equal value in money. And if money be borrowed, it is always understood that interest is payable, and it is by law demandable: but when a horse, a house, or any such property is borrowed, the restoration of the identical property is always understood. Or if a thing be used for any other, or more purposes, than those for which it was borrowed, or be lost; the party may have his action on the case for it.

BORSHOLDER. The same with headborough.

BOSCAGE, the food yielded to cattle, &c. by-wood and trees, such as oak and beech mast.

BOSCUS, all manner of wood.

BOTE, a compensation, or amends.

BOTELESS, without emendation.

BOTHAGIUM, customary dues paid to the lord of the manor, for pitching and standing of booths in a fair, or market.

BOTTOMRY, the act of borrowing money on a ship's bottom, by engaging the vessel for payment; so that in case she miscarry, the lender loses his money; but if she finish her voyage, and arrive in safety, the borrower is to pay the loan with a premium, or interest, agreed on (which is always adequate to the risk), and if this be denied, or deferred, the lender shall have the ship.

BOVATA TERREÆ, as much as one ox can plough in a year.
BOUCHE OF COURT, an allowance of provision from the king to his knights and servants, that attended him in any military expedition.

BOUND, or BOUNDARY, the utmost limits.

BOW-BEARER, is an under officer of the forest; a kind of sworn keeper.

BOWYERS, one of the ancient companies of the city of London. The bowyers of London were bound to have each fifty well made bows, under penalty of 10s. for each bow deficient.

BRACINUM, the whole quantity of ale brewed at one time.

BRASIAM, malt; to make malt was a service paid by some tenants to their landlord.

BRASS, must be sold in open fairs, or markets, or in the owners houses, on pain of 10l. Brass, pewter, and bell metal, &c. shall not be sent out of the kingdom, on pain of forfeiting double the value. 33 Hen. VIII. c. 7.

BREACH OF COVENANT. See Covenant.

BREACH OF THE PEACE. See Peace.

BREAD, the statutes to regulate the price and assize of bread, and to punish persons who shall adulterate meal, flour, or bread, are 31 Geo. II. c. 29. 13 Geo. III. c. 62. and 37 Geo. III. but cannot, on account of their great length, be abridged in this work.

BREAD OF TREET, or TRITE, similar to household bread.

BREAKING PRISON. See Prison.

BREDWHITE, the imposition of a fine, for defaults in the assize of bread.

BREHON, the judges and lawyers in Ireland were anciently called brehons.

BRENAGUIM, the payment in bran, which the tenant anciently made, to feed the lord's hounds.

BREV PERQUIRERE, to purchase a writ, or licence of trial, in the king's court. Hence arose the custom of paying 6s. 8d. where the debt is 100l. and so upwards, in suits and trials, for money due upon bonds.

BREV DE REITO, a writ of right for a person ejected, to sue for the possession of an estate detained from him.

BREVIBUS ET ROTULIS LIBERANDIS, a writ to a sheriff, to deliver to the new sheriff chosen in his room, the county.
with the appurtenances, \textit{una cum rotulis brevibus}; and other things belonging to that office.

**BREWERS.** By 21 Geo. III. st. 2. c. 41. brewers of strong and small beer, are to take out annual licences from the officers of excise, and are subject to many regulations under the excise laws. The 27 Geo. III. c. 12. settles the duty on beer and ale. By 32 Geo. III. c. 8. s. 1. common brewers must not sell beer in less quantities than 4\(\frac{1}{2}\) gallons. See \textit{Excise}.

**BRIBERY,** the receiving, or offering, any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity; it also signifies the taking or giving a reward for office, of a public nature.

As to the punishment of bribery, by the common law, \textit{bribery in a judge}, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason. 3 \textit{Inst. 148.} and all other kinds of \textit{bribery} are punishable by fine and imprisonment; which may also be inflicted on those who offer a bribe, though not taken. \textit{Black. 143. 2 Inst. 147.}

**BRIBOR,** one that pilfereth other men’s goods.

**BRICKS and TILES.** There shall be paid, by the maker, for every 1000 of bricks made in Great Britain, and so in proportion, an excise duty of 5s. 37 Geo. III. c. 14. For every 1000 of plain tiles 4s. 10d. 37 Geo. III. c. 15. For every 1000 of pan tiles, or ridge tiles, 12s. 10d. 34 Geo. III. c. 15. For every 100 of paving tiles, \textit{not exceeding} ten inches square, 2s. 5d. 34 Geo. III. c. 15. For every 100 of paving tiles, \textit{exceeding} ten inches square, 4s. 10d. 34 Geo. III. c. 15. For every 1000 of tiles, other than such as are before described, by whatsoever name they may be called. 4s. 10d. 34 Geo. III. c. 15.

The foregoing duties are drawn back on exportation; and semielliptical tiles, for the \textit{sole purpose} of draining wet or marshy lands, are exempted from the above duties.

All combinations to inhaance the price of bricks or tiles, shall be void; and every brick-maker who shall offend therein shall forfeit 20l. and every clerk, agent, or servant, 10l. half to the poor, and half to the person who shall sue in six calendar months, in one of the courts at Westminster.

**BRIDGE,**
BRIDGE, public bridges which are of general convenience, are of common right to be repaired by the inhabitants of that county in which they lie. Hale's P. C. 143. Where a person makes a bridge for the common good of the king's subjects, he is not bound to repair it. 2 Inst. 700.

No man can be compelled to build or contribute to the charges of building any new bridge, without an act of parliament.

And if none are bounden to repair by tenure or prescription at common law, then the whole county or franchise shall repair it. 2 Inst. 701.

Indictments, for not repairing bridges will not lie, but in a case of common bridges on highways, though they will lie for a bridge on a common foot-way. Mod. Cas. 256. The defendants to an indictment, for not repairing a bridge, must not only shew, that they are not bound to repair the whole, or any part of the bridge; but also shew, what other person is bound to repair the same. 1 H. 251.

BRIEF, any writ in writing, issued out of any of the king's courts of record at Westminster, whereby any thing is commanded to be done in order to justice.

Briefs for collecting charity, are to be read in all churches and chapels, within two months after receipt thereof; and the sums thereby collected shall be paid over to the undertaker of briefs, within six months after the delivery of the briefs under penalty of 20l.

Brief also signifies an abridgment of the client's case made out for the instruction of counsel, on a trial at law, which is to be fully but briefly stated.

BRIGANDINE, a coat of mail.

BRIGANTES, the inhabitants of Yorkshire, Lancashire, Durham, Westmoreland, and Cumberland.

BRIGBOTE, or BRUGBOTE, a fine for not repairing bridges.

BROCAFE, the wages, hire, or trade of a broker.

BROKERS, are those that contrive, make, and conclude bargains and contracts, between merchants and tradesmen, in matters of money and merchandize, for which they have a fee or reward.

Brokers are to be annually licensed in London, by the lord mayor and aldermen: If any persons shall act as brokers, without H 2 being
being thus licensed and admitted, they shall forfeit the sum of 500l. and persons employing them 50l. And brokers are to register contracts, &c. under the like penalty: Also they shall not deal for themselves on pain of forfeiting 200l. 6 Anne, c. 16. These are called Exchange-brokers.

There are besides persons called pawn-brokers, who commonly keep shops and let out money to poor necessitous people upon paws, but these are not of that antiquity or credit as the former. Several late statutes have made divers regulations in their trade, and subjected them to annual licences, and divers penalties on trading without such licences, for which see 29 Geo. III. c. 57.

BROTHEL-HOUSES, are lewd places, the common habitations of prostitutes. They were formerly allowed in certain places, but by a proclamation in the 37th year of the reign of Henry the Eighth they were all suppressed.

BRUSHMENT, BRUSUA, and BRUSULA, browse, or brushwood.

BUCKSTALL, a station to watch the deer in hunting; the attending whereof was performed, by the tenants to the lord within the forest.

BUILDINGS. If a house new-built exceed the ancient foundation, and thereby hinder the light or air of another house, action lies against the builder. Hob. 131. In London a man may place ladders or poles upon the ground, or against houses adjoining, for building his own; for which he ought to have a licence from the mayor and aldermen, but he must not break ground. If any person build any new house in London, he must erect a party-wall of brick or stone between house and house, and of the thickness of two bricks in length in the ground-story, or he shall forfeit 50l. And pipes are to be fixed on the sides of such houses, for conveying off the water falling thereon, into the channels.

BULL, a brief or mandate of the pope, or bishop of Rome, which was formerly of force in this country, but by 28 Hen. VIII. c. 16. made void: And by 13 Eliz. c. 1. and 2. if any person shall obtain from Rome any bull or writing, to absolve or reconcile such as forsake their due allegiance, or shall give or receive absolution by colour of such bull, or use or publish such bull, &c. it is high treason.
BULL AND BOAR, by custom, the parson is obliged in some places to keep a bull and boar, for the use of the parishioners, for the increase of calves and pigs; and every inhabitant prejudiced by his not keeping the same, may have an action on the case against him. 1 Rol. Abr. 539.

BULLION, gold or silver in mass or billet.

BUNDLES, a sort of records of the chancery lying in the office of the rolls, in which are contained the files of bills and answers, &c.

BURCIFER REGIS, the king's purse-bearer, or keeper of his privy-purse.

BURGAGE TENURE, is where houses, or lands which were formerly the scite of houses, in an ancient borough, are held of the king or some other lord in common socage, by a certain established rent. 2 Black. 82. See Borough English.

BURGHBOTE, a contribution towards the building or repairing of castles or walls of defence, or towards the building of a borough or city.

BURGESSES, those are usually so called, who serve in parliament, for any borough or corporation; although the inhabitants and magistrates were so called formerly.

BURGLARY, the breaking and entering the mansion-house of another in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. Hale's, pl. 11. But there must be a breaking and entry, to complete this offence. 1 Haw. c. 38. s. 3.

If there be day-light enough, begun or left, to discern a man's face, it is no burglary. This however does not extend to moon-light, for then many burglaries would go unpunished. 4 Black. 224.

Every entrance into a house by trespass is not a breaking in this case; for there must be an actual breaking. If the door of a mansion should stand open, and the thief enter, this is not a breaking: or if the window of an house be open, and a thief with a hook or other instrument, should draw out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief should break the glass of the window, and with a hook or other instrument draw out some of the goods of the owner, this is a burglary, for there is an actual breaking of the house. 3 Inst. 64.
The mansion-house, does not only include the dwelling-house, but also the outhouses that are parcel thereof, though not under the same roof, or joining contiguous to it; but if they be far remote from the dwelling-house, and not so near it, as to be reasonably esteemed parcel thereof, then the breaking is not burglary.

H. H. 553.

To break and enter a shop, not parcel of the mansion-house, in which the shop-keeper never lodges, but only works or trades there in the day-time, is not a burglary, but only larceny; but if he or his servant, usually or often lodge in the shop at night, it is then a mansion-house, in which a burglary may not be committed. Id.

Where the owner leaves his house, and disfurnishes it, without a separate resolution of returning, it cannot under these circumstances be deemed a dwelling-house; but where the owner quits the house in order to return occasionally, though no person be left in it, it may still be considered as his mansion-house. Post. 76.

A chamber in an inn of court, &c. where one usually lodges, is a mansion-house, for every one hath a several property there; but a chamber where any person lodges as an inmate cannot be called his mansion; though if a burglary be committed in his lodgings, the indictment may lay the offence to be in the mansion-house of him that let them. 3 Inst. 65.

If the owner live under the same roof with the inmates, there must be a separate outer door; or the whole is the mansion of the owner; but if the owner inhabit no part of the house; or even if he occupy a shop or cellar in it, but do not sleep therein, it is the mansion of each lodger, though there be but one outer door. Leech's Haw. c. 38, s. 15.

How punishable. By the 18 Eliz. c. 7. s. 1. it is enacted, that if any person shall commit any felonious rape, ravishment, or burglary, and be found guilty by verdict, or shall be outlawed, or shall confess such rape or burglary, every person so found guilty shall suffer death, and forfeit as in cases of felony without benefit of clergy.

But in all cases of burglary, accessories after must have their clergy. 1 Haw. 557.

Conviction of a burglar and the reward. The court may allow a prosecutor who hath bona fide prosecuted, such sum as they shall think reasonable, not exceeding the expenses he was bona fide put unto;
unto; making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time. 18 Geo. III. c. 19.

And further, any person who shall apprehend any one guilty of burglary, and prosecute him to conviction, shall have a certificate without fee, to be made out and delivered before the end of the assizes, under the hand of the judge, certifying the conviction, and in what parish the burglary was committed, and that the burglar was taken by the person or persons claiming the reward; and if any dispute should arise between the parties claiming, the judge shall by such certificate, direct the same to be paid and distributed among them as to him shall seem just and reasonable; and on tendering such certificate to the sheriff, and demand made, he shall pay to the person or persons so entitled the sum of 40l. without any deduction. 5 Anne, c. 31. 6 Geo. 23. s. 10. Such certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted, for which he shall have 1s. And the said certificate may be once assigned over; and the original proprietor or assignee of the same, shall by virtue thereof, be discharged from all manner of parish and ward-offices, within the parish and ward where the felony was committed. 10 & 11 Wm. c. 23.

BURIALS, persons dying are to be buried in woollen, or their representatives shall forfeit 5l. and affidavit is to be made thereof before a justice under a like penalty. Minister to keep register, at the parish expense.

BURNING, DESTROYING, or MOLESTING ships, persons convicted thereof, shall be guilty of felony without benefit of clergy. 12 Anne, c. 18.

BURNING IN THE HAND. See Clergy.

BUTCHER. Butchers within ten miles of London may not sell fat cattle alive or dead to one another, but they may sell dead calves or sheep. 7 Anne, c. 6. No butcher shall be a tanner or currier on pain of 6s. 8d. a day. 1 Jac. c. 22. Every butcher, offering for sale any hide gashed in the flaying thereof, shall forfeit 2s. 6d. for such hide. And any butcher who shall put to sale any hide putrified or rotten shall forfeit 3s. 4d. for each offence. Any butcher who shall kill or sell any victual on the lord's day shall forfeit 6s. 3d.

BUTTERAGE
BUTLERAGE OF WINES, that imposition upon sale wines, brought into the land, which the king's butler, by virtue of his office, may take of every ship: viz. 2s. for every ton of wine imported by strangers. 4 Inst. fol. 30.

BUTTER, every cooper making vessels for the packing of butter, shall make them of seasoned wood, and tight; and shall make no others, but tubs, firkins, and half firkins. The tub shall be capable of containing eighty-four pounds of butter, and not less; and shall not of itself weigh less than eleven pounds, nor more than fifteen. The firkin shall be capable of containing fifty-six pounds, and not less; and shall not weigh less than seven pounds, nor more than eleven. The half firkin shall be capable of containing twenty-eight pounds, and not less; and shall weigh not more than four pounds, nor less than six, under the penalty of forfeiting 10s. for every vessel made contrary to the above directions. And every cooper shall brand his christian and surname on the outside of the bottom of each vessel, under the penalty of 10s. Every farmer, and other person, who shall pack up butter for sale, shall pack it in vessels made and marked as aforesaid; and when the same is fully seasoned in water, shall, on bottom, on the inside, and on the top on the outside, brand his christian and surname at length, and shall also brand, both on the top and bouge of the vessel, the weight of the same; and to prevent any of the staves being changed, shall burn both his christian and surname in two separate places across the bouge thereof, under the penalty of forfeiting 5l.

And no butter which is old and corrupt, shall be mixed with any butter that is new and sound; nor shall any whey butter be mixed with any butter made of cream, but every cask of butter shall be of one sort or goodness; and no butter shall be salted with any great salt, but with fine small salt; and every person acting contrary to the directions aforesaid shall forfeit 5l.

And every cheesemonger, or other, who shall sell any tub, firkin,
kin, or half firkin of butter, shall deliver therein the full quantity and due quality, or shall be liable to make satisfaction, according to the price thereof.

And no cheesemonger, or other person, shall repack for sale, any butter, in any tub, firkin, or half firkin, on pain of forfeiting double the value thereof.

The prosecution for the offences above, shall be commenced in four months after the sale of the butter.

BUTTONS, the making and sale of these articles are restricted by the statutes 13 & 14 C. II. 4 W. and M. c. 10, 8 Ann. c. 6, 4 & 7 Geo. I. c. 7. & 12, but are seldom enforced.

BUYING and SELLING, a transferring of property from one person to another, in consideration of some price or recompence. On an agreement for goods, the vendee cannot carry them away without payment, unless the vendor agree to trust him. But if any part of the price be laid down, or any portion of the goods delivered by way of earnest, the vendee may recover the goods by action, as well as the vendor may the price of them. By 29 C. II. c. 3, no contract for the sale of goods, to the value of 10l. or upwards, shall be valid, unless the payment or delivery be performed, or unless some note in writing be made and signed by the party, or his agent. But if a vendee, after a bargain is struck, tender the money, and the vendor refuse it, the property is absolutely vested in the vendee.

BY-LAW, is a private law made by those who are duly authorized so to do by charter, prescription, or custom, for the preservation of order and good government, within some particular place or jurisdiction. Moor. 583.

Every corporation, lawfully erected, hath power to make by-laws, or private statutes, for the better government of the corporation; which are binding upon themselves, unless contrary to the laws of the land, and then they are void. 11 Black. 475.

BYRLAW, or LAWS OF BURLAW, laws made by husbandmen, or townsmen, concerning neighbourhood, to be kept among themselves,

CABBAGES.
CABBAGES. Any person who shall steal, or take away, or maliciously pull up and destroy any turnips, potatoes, cabbages, parsnips, peas, or carrots, growing in any lands, &c. shall on conviction before one justice, by confession, or oath of one witness, forfeit, over and above the value of the goods stolen, a sum not exceeding 10s. one half to the owner of the goods, and the other to the poor, and in default of payment thereof, shall be committed to the house of correction, there to be kept to hard labour for one month, unless the penalty be sooner paid.

CABLES AND CORDAGE. By 35 Eliz. c. 8. persons making any cables of any old and overworn stuff, which shall contain above seven inches in compass, shall forfeit four times the value of every such cable so made; and every person tarring any hawser, or other cordage, made of such old and overworn stuff, of a lesser size, not containing in compass seven inches, or who shall sell such cable, hawser, or other cordage, shall forfeit the treble value thereof.

By 6 Geo. III. c. 45. a bounty of 2s. 4d. is allowed upon every hundred weight of British cordage exported as merchandise to foreign parts; but nothing in this act to extend the bounties to cordage manufactured from old cables, ropes, or cordage, commonly called twice laid cordage.

By 26 Geo. III. c. 85. no bounty to be paid if made from American hemp, nor for less quantity than three tons weight, continued by 36 Geo. III. c. 108.

CALENDAR, a table containing the divisions or time into days, weeks, months, &c. in one year, in their regular order and succession; the terms, feasts, changes, of the moon, &c. See 24 Geo. II. c. 23. s. 1. the calendar, tables, and rules, mentioned in the act, are prefixed to all the editions of the common prayer book.

CALENDAR OF PRISONERS, a list of the names of the prisoners in the custody of the respective sheriffs of counties, &c.

CALLICO. By 7 Geo. I. c. 7. no person shall wear in appare
rel any printed or dyed calico, under the penalty of 5l. and drapers selling any such forfeit 20l. by 14 Geo. III. c. 72. shifts wholly made of raw cotton wool within this kingdom, are not to be considered as callicoes, and every person may use the same. These are distinguished by three blue stripes in the selvedge. See Excise.

CALLING THE PLAINTIFF, is the form which takes place when the plaintiff is non-suited. It is usual for a plaintiff, when he or his counsel perceives that there is not sufficient evidence to maintain his issue, to be voluntarily non-suited, or withdraw himself, whereupon the cryer is ordered to call the plaintiff, and if neither he, nor any one for him appear, he is nonsuited, the jurors are discharged, the action is at an end, and the defendant recovers his costs; but this is not like a retraxit, or a verdict, a bar to another action.

CAMBRIDGE and LAWNS. See Excise.

CAMBRIDGE. By stat. 34 & 35 Hen. VIII. c. 24. a rent is given to the knights of the shire in the county of Cambridge, instead of their wages. All that hold tenements in Cambridge shall repair the pavements, &c. over against their tenements, on pain of forfeiting 1d. for every square yard of pavement, and 12d. for every pole of gravelled lanes.

The vice chancellor and the mayor of Cambridge may act as justices for the county, without the landed qualification.

CAMPUS MARTII, an assembly of the people every year on May-day, where they confederated together to defend the kingdom against foreigners and enemies.

CANDLEMAS DAY, the feast of the purification of the blessed Virgin Mary, (Feb. 2).

CANDLES. See Excise.

CANFARA, a trial by hot iron, formerly used here. See Ordeal.

CANNA, a rod in measure of ground, or distance.

CANON, is a law, or ordinance, of the church. The canon law consists partly of certain rules taken out of the scripture, partly of the writings of the ancient fathers of the church, partly of the ordinances of general and provincial councils, and partly of the decrees of the pope in former ages.

Before the 25 Hen. VIII. s. 19. the ecclesiastics might make canons
canons without the king, but are by that statute restrained; but since that statute they may make canons with the assent of the king, so long as they are not contrary to the laws of the land, or derogatory of the king's prerogative.

Ecclesiastical persons are subject to the canons. Those of 1640 have been questioned, but no doubt was ever made as to those of 1603 by the court. No canons, since 1603, can bind laymen. 6 Mod. 190.

CANTRED, or CANTREF, signifies an hundred villages.

CAPACITY, in the law signifies when a man, or body politic, is able to give or take lands, or other things, or to sue actions.

CAPE, is a writ judicial, touching pleas of lands or tenements: it is divided into cape magnum and cape parvum, both which take hold of things immovable, and differ from each other in these points, first, because cape magnum lieth before appearance; and cape parvum afterwards. Secondly, the cape magnum summoneth the tenant to answer to the default, and aver to the demandant; cape parvum summoneth the tenant to answer to the default only.

CAPE MAGNUM, this writ is awarded, upon the defendant or tenant's not appearing or demanding the view in such real actions, where the original writ does not mention the parcels or particulars demanded.

CAPE PARVUM, this writ lieth in a case where the tenant is summoned in a plea of land, and comes at the summons, and his appearance is aforesaid; and after he makes default at the day that is given to him; then this writ should issue for the king, &c.

CAPE AD VALENTIAM, is a species of cape magnum, and lies before appearance, it lies where a person is implicated of certain lands, and I vouch to warrant another, against whom the summons ad warrantizandum, hath been awarded, and the sheriff comes not at the day given; then, if the demandant recover against me, I shall have this writ against the vouchee, and shall recover so much in value of the land of him, if he have so much; and if he have not so much, then I shall have execution of such lands and tenements as descend to him in fee simple; or, if he purchase afterwards, I shall have against him a re-summons, and if he can say nothing, I shall recover the value.

CAPIAS,
CAPIAS, is a writ of two sorts, one whereof is called capias ad respondendum, before judgment, where an original is sued out, &c. to take the defendant, and make him answer the plaintiff: and the other a writ of execution, after judgment, being of divers kinds.

CAPIAS AD RESPONDENDUM, is a writ commanding the sheriff to take the body of the defendant, if he may be found in his bailiwick, or county, and him safely to keep, so that he may have him in court on the day of the return, to answer to the plaintiff of a plea of debt, or trespass, or the like, as the case may be. And if the sheriff return that he cannot be found, then there issues another writ, called an alias capias; and after that another, called a pluris capias, and if upon none of these he can be found, then he may be proceeded against unto outlawry. But all this being only to compel an appearance, after the defendant hath appeared, the effect of these writs is taken off, and the defendant shall be put to answer, unless it be in cases where special bail is required, and there the defendant is actually to be taken into custody. 3 Black. 212.

CAPIAS AD SATISFACIENDUM, is a writ directed to the sheriff, commanding him to take the body of the defendant, and him safely to keep, so that he may have his body in court at the return of the writ, to make the plaintiff satisfaction for his demand: otherwise he is to remain in custody till he do. When a man is once taken in execution upon this writ, no other process can be sued out against his lands or goods. But if a defendant die whilst charged in execution upon this writ, the plaintiff may, after his death, sue out new executions, against his lands, goods, or chattels. 3 Black. 415.

CAPIAS ULTAGATUM, is a writ that lies against a person that is outlawed in any action, whereby the sheriff is commanded to apprehend the body of the party outlawed, and keep him in safe custody, till the day of the return of the writ, and then present him to the court, there to be dealt with for his contempt. But this being only for want of appearance, if he shall afterwards appear, the outlawry is most commonly reversed. 3 Black. 284.

CAPIAS IN WITHERNAM, is a writ directed to the sheriff, in case where a distress is carried out of the county, or concealed by the distrainer, so that the sheriff cannot make deliverance of the
the goods upon a replevin; commanding him to take so many of the distrainer's own goods, by way of reprisal, instead of the other that are so concealed.

CAPITE, tenure in capite, is to hold of the king as the head of the commonwealth, be it by knight service, or socage. The ancient tenure in capite was of two sorts, the one principal and general, which is of the king; the other special and subaltern, which was of a particular subject; but tenure in capite is now abolished, and by 12 C. II. c. 24. all tenures are turned into free and common socage; so that the tenures hereafter to be created by the king, are to be in common socage only, and not by capite, knights service, &c.

CAPITILIITUM, poll money.

CAPTION, when a commission is executed, and the commissioners names subscribed to a certificate, declaring when and where the commission was executed, that is called the caption. CAPTION signifies sometimes an arrest.

CAPUT ANNI, new year's day.

CAPUT BARONIE, the castle of a nobleman, which is not to be divided among daughters (if there be no son), but must descend to the eldest daughter.

CAPUT JEJUNII. is Ash-Wednesday, in our records.

CARDS and DICE—duty on see stamps, selling second-hand cards incurs a penalty of 25l. per pack. 16 Geo. III. c. 34.

CARRICK or CARRACK, a ship of great burthen, used both in trade and war. 2 Rich. II. c. 4.

CARRIER, every person carrying goods for hire is deemed a carrier, and as such is liable in law for any loss or damage that may happen to them whilst in his custody. Waggoners, captains of ships, lightermen, &c. are therefore carriers; but a stage-coachman is not within the custom as a carrier: neither are hackney-coachmen carriers within the custom of the realm, so as to be chargeable for the loss of goods, unless they are expressly paid for that purpose, for their undertaking is only to carry the person.

If a person take hire for carrying goods, although he be not a common carrier, he may nevertheless be charged upon a special assumpsit; for where hire is taken a promise is implied; and where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them on account of the hire, and
and the carrier can be no loser, as he may recover against the hundred.

Goods sent by a carrier cannot be distrained for rent; and any person carrying goods for all persons indifferently, is to be deemed a common carrier as far as relates to this privilege.

A delivery to a servant is a delivery to the master, and if goods are delivered to a carrier's porter and lost, an action will lie against the carrier. 1 Salk. 282.

Where a carrier gives notice by printed proposals that he will not be responsible for certain valuable goods if lost, if more than the value of a sum specified, unless entered and paid for as such; and valuable goods of that description are delivered to him, by a person who knows the conditions, but concealing the value, pays no more than the ordinary price of carriage and booking, the carrier is, under such circumstances, neither responsible to the sum specified, nor liable to repay the sum paid for carriage and booking. M. 30 Geo. III. 1 H. B. 293.

A carrier who undertakes for hire to carry goods, is bound to deliver them at all events, unless damaged and destroyed by the act of God, or the king's enemies; and if any accident, however inevitable, happen through the intervention of human means, a carrier becomes responsible. 1 T. R. 27.

CARTS, every cart, &c for the carriage of any thing, to and from any place where the streets are paved within the bills of mortality, shall contain six inches in the felly; and no person shall drive any cart, &c. within the limits aforesaid, unless the name of the owner and number of such cart, be placed in some conspicuous part thereof, and his name entered with the commissioners of the hackney-coaches, under the penalty of 40s. and any person may seize and detain such cart, till the penalty be paid. 18 Geo. II. c. 33. And if the driver shall ride upon such cart without having a person on foot to guide it, he shall forfeit 10s. and the owner so guilty shall forfeit 20s. On changing property the names of the new owners shall be affixed, and entry shall be made with the commissioners of the hackney-coaches. The entry of all carts driven within five miles of Temple Bar, is strictly enjoined by the 21 Geo. III. st. 2. c. 27.

CARUCAGE, a tribute imposed on every plough, for the public service.
CARUCATE or CARVE OF LAND, is a certain quantity of land, by which the subjects have been sometimes taxed.

CASES or REPORTS IN LAW, published fairly and accurately, seem countenanced by the judges as in the case of Carrie and others against Walter.

CASTELLORUM OPERATIO, castle-work, or service and labour done and performed by inferior tenants, for the building and upholding castles and public places of defence: towards which some gave their personal assistance and others paid their contribution.

CASTLE GUARD RENTS, are rents paid to those, who dwell within the precincts of any castle, towards the maintenance of such as watch and ward the castle.

CASU CONSIMILÌ, a writ of entry granted, where the tenant by courtesy, or for term of life, or for the life of another, aliens in fee, or in tail, or for term of another's life.

CASU PROVISO, is a writ of entry given by the statute of Gloucester, c. 7, where a tenant in dower aliens in fee, or for term of life; and it lies for him in reversion against the alienee.

CATALLIS CAPTIS NOMINE DISTRICTIONIS, is a writ that lies within a borough, or within a house, for rent going out of the same, and warrants a man to take the doors, windows, or gates, by way of distress for the rent.

CATALLIS REDDENDIS, a writ which lies where goods are delivered to any man to keep a certain day, and are not upon demand delivered at the day.

CATCH LAND, in Norfolk there are grounds, where it is not known to what parish they certainly belong, so that the minister who first seizes the tythe, by that right of pre-occupation, enjoys it for that one year; whence it is called catch land.

CATCH-POL, though now, a word of contempt, was anciently used without reproach, for serjeants at mace, bailiffs, or sheriff's officers.

CATHEDRAL, after the establishment of Christianity, the emperors and other great men, gave large demesnes and other possessions for the maintenance of the clergy, whereon were built the first places of public worship, which were called cathedra, cathedrals, sees or seats, from the bishop and his chief clergy's residence thereon.

CATHE-
CATHEDRATIC, a sum of two shillings, paid to the bishop by the inferior clergy, *in argumentum subjectioinis et ob hondrem cathede.

CATTLE, by the 3 and 4 Ed. VI. c. 19. no person shall buy any ox, steer, runt, or cow, &c. and sell the same again alive, in the same market, or fair, on pain of forfeiting double the value thereof, half to the king, and half to him that shall sue. *This is the only act in force against forestalling, ingrossing, and regrating.*

If any person shall feloniously drive away, or steal, or shall wilfully kill any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb, with a felonious intent to steal the whole carcass, or any part thereof, or shall assist in committing any such offence, he shall be guilty of felony without benefit of clergy. 14 and 15 Geo. II. c. 6. and 34.

Any person, who shall unlawfully and maliciously kill, maim, or wound *any cattle,* shall be guilty of felony, without benefit of clergy; and the hundred shall be answerable for the damages, not exceeding 200l. 9 Geo. c. 22. And horses, mares, and colts, are included in the word *cattle.* Every person, who shall apprehend and prosecute to conviction any offender, shall have 10l. reward; to be paid by the sheriff within a month, on his producing a certificate from the judge. The 26 Geo. III. c. 71. to prevent the stealing of horses, &c. for their skin, provides that all persons keeping a slaughter-house for cattle not killed for butcher's meat, shall take out licences, be subject to an inspector, and only slaughter at certain times.

CAVEAT, is a caution, entered in the spiritual court, to stop probates, administrations, licences, dispensations, faculties, institutions, and such like from being granted without the knowledge of the party that enters it. *A caveat stands in force for three months.* 2 Rol. Rep. 6.

The entering a *caveat,* being at the instance of the party, is only for the benefit of the ordinary, that he may do no wrong; it is a cautionary act for his better information, to which the temporal courts have no manner of regard; therefore if after a caveat entered, the ordinary should grant administration, or probate of a will, it is not void by our law; it is true it is void by the canon law, but our law takes *no notice of a caveat.* Rol. Rep. 191.
CAUSA MATRIMONII PRÆLOCUTI, a writ which lies, where a woman gives lands to a man in fee simple to the intent he shall marry her, and being by her thereunto required, he refuses.

CAUSAM NOBIS SIGNIFICES, a writ directed to a mayor of a town or city, &c. that formerly by the king’s writ, being commanded to give seisin unto the king’s grantee of any lands or tenements, delays so to do, willing him to shew cause, why he so delays the performance of his charge.

CAUSES and EFFECTS. In most cases the law hath respect to the cause or beginning of a thing, as the principal part on which all other things are founded; for such as is the cause such is the effect: where the cause ceases, the effect or thing will cease, as wedlock or matrimony ceasing, the dower ceases. 1 Co. Inst. 13.

CAUTIONE ADMITTENDA, a writ that lies against the bishop, who holds an excommuniate person in prison for his contempt, notwithstanding he offers sufficient caution or security to obey the commandments of the church for the future.

CENEGILD, an expiatory mulct or fine, paid by one who kills another, to the kindred of the deceased.

CENSURE is, in several manors in Cornwall and Devon, the calling in, of all above the age of sixteen, to swear fealty to the lord, to pay 2d. per poll, and 1d. per ann. ever after, as certainty, and the persons thus sworn are called censors.

CENTENARII, petty judges under sheriffs of counties, who had rule of a hundred.

CEPI CORPUS, a return made by the sheriff, who upon a capias, exigent, or other process, has taken the body of the party.

CERTAINTY, a convenient certainty is required in writs, declarations, pleadings, &c. 11 Rep. 25, 121.

CERTIFICANDO DE RECOGNITIONESTAPLUÆ, a writ directed to the mayor of the staple, &c. commanding him to certify the lord chancellor of a statute of the staple, taken before him between such and such; where the party himself detains it, and refuse to bring it in.

CERTIFICATE, a writing made in any court, to give notice to another court of any thing done therein, which is usually by way of transcript. And sometimes it is made by an officer of the same court, where matters are referred to him, or a rule of court
court is obtained for it, containing the tenor and effect of what is done.

CERTIFICATION OF ASSIZE OF NOVEL DISSEISIN, a writ granted for the re-examination or review of a matter passed by assize before any justices; as where a man appearing by his bailiff to an assize brought by another, hath lost the day, and having something more to plead for himself, as a deed of release, &c. which the bailiff did not or might not plead for him; desires a farther examination of the cause, either before the same justices or others, and obtaineth letters patent to that effect.

CERTIORARI, the writ of certiorari, is an original writ, issuing out of the court of chancery or the king's-bench, directed in the king's name, to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end, the party may have the more sure and speedy justice, before the king or such justices as he shall assign to determine the cause. 1 Bu. Abr.

A certiorari lies in all judicial proceedings in which a writ of error does not lie; and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the king's bench. Ld. Raym. 469.

In particular cases, the court will use their discretion to grant a certiorari, as if the defendant be of good character, or if the prosecution be malicious, or attended with oppressive circumstances. Leach's Ham. 2. c. 27. s. 28. n.

The courts of chancery and king's-bench may award a certiorari to remove the proceeding from any inferior courts, whether they be of ancient, or newly created jurisdiction, unless the statute or charter which creates them, exempts them from such jurisdiction. 1 Salk. 144. pl. 3.

CERT-MONEY, head-money. See Censure.

CESSAVIT, a writ that lies in many cases, upon this general ground, that he against whom it is brought, has for two years ceased or neglected to perform such service, or to pay such rent as he is tied to by his tenure, and has not upon his lands and tenements sufficient goods or cattle to be distrained.

CESSE, an assessment or tax.

CESSION, is where an ecclesiastical person is created a bishop, or where a parson of a parsonage takes another benefice without
without dispensation, or otherwise not qualified, &c. in both cases, their first benefices are said to be void by cession: and to those benefices which the person had who was created a bishop, the king shall present for that time, whosoever is patron of them; and in the other cases the patron may present.

CESSOR, one who neglects so long to perform a duty belonging to him as to be liable to have a writ of cessavit brought against him. See Cessavit.

CESTUI QUE TRUST, is he to whose use and benefit, another man is enfeoffed of lands or tenements. By 29 Ch. II. c. 3. Lands of cestui que trust may be delivered in execution.

CHALDRON, or chalder of coals, by 16 and 17 Ch. II. c. 2, contains thirty-six bushels of coals heaped up, and according to the sealed bushel, kept at Guildhall, London.

CHALKING, wounding, and maiming cattle, made felony in Ireland.

CHALLENGE, taken either against persons or things: persons, as in assize the jurors, or any one or more of them; or in a case of felony, by a prisoner at the bar.

Challenge of jurors, is of two kinds; either to the array by which is meant the whole jury as it stands arrayed in the pannel or little square pane of parchment on which the jurors names are written; or to the polls; by which are meant the several particular persons or heads in the array. 1 Inst. 156.

Challenge to the array is in respect of the partiality or default of the sheriff, coroner, or other officer that made the return; and it is then two fold: 1st. Principal challenge to the array, which if it be made good, is a sufficient cause of exception, without leaving any thing to the judgment of the triers; as if the sheriff be of kindred to either party; or if any of the jurors be returned at the denomination of either of the parties. 2nd. Challenge to the array for favor, which being no principal challenge, must be left to the discretion and conscience of the triers. As where either of the parties suspects that the juror is inclined to favor the opposite party. 1 Inst. 158.

Principal challenge to the polls, is where cause is shewn, which if found true, stands sufficient of itself, without leaving any thing to the triers; as if the juror be under the age of twenty-one, it is a good cause of challenge.
Challenge to the polls for favor, is when neither party can take any principal challenge; but shews causes of favor, as that the juror is a fellow-servant with either party.

In cases of high treason, and misprision of high treason, the prisoner shall have his peremptory challenge to the number of thirty-five. 1 Inst. 156. But with regard to petit treason, murder, and other felonies, the 22 Hen. VIII. c. 14. continues in force, which takes away the peremptory challenge of more than twenty.

CHAMBERLAIN. The office of lord great chamberlain of England is hereditary; and where a person dies seized in fee of this office, leaving two sisters, the office belongs to both, and they may execute it by deputy, but such deputy must be approved of by the king, and must not be of a degree inferior to a knight. To the lord chamberlain the keys of Westminster-hall, and the court of requests are delivered upon all solemn occasions. He disposes of the sword of state to be carried before the king, when he comes to the parliament, and goes on the right-hand of the sword next the king's person. He has the care of providing all things in the house of lords in the time of parliament. To him belong, livery and lodgings in the king's court, &c. and the gentleman usher of the black rod, yeoman usher, &c. are under his authority.

The lord chamberlain of the household, has also, superintendence of artificers retained in the king's service, messengers, comedians, revels, music, &c.

Chamberlain of London, is commonly the receiver of all rents and revenues belonging to that city, and has great authority in making and determining the rights of freemen, and regulating matters concerning apprentices, orphans, &c.

Chamberlain of Chester, when there is no Prince of Wales and Earl of Chester, receives and returns all writs, coming thither out of any of the king's courts.

CHAMPARTY, or CHAMPERTY, is the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gain. By stat. 33 Ed. I. st. 3. both the champantor, and he who consents thereunto, shall be imprisoned three years, and make fine at the king's pleasure.
CHAMPION OF THE KING, whose office is at the coronation of our kings, to ride into Westminster-hall armed cap a pie, when the king is at dinner there, and throw down his gauntlet by way of challenge, pronounced by a herald, that if any man shall deny, or gainsay the king's title to the crown, he is there ready to defend it in single combat, &c. which being done the king drinks to him, and sends him a gilt cup, with a cover, full of wine, which the champion drinks, and has the cup for his fee. This office is hereditary.

CHANCELLOR and CHANCERY. He that bears the magistracy, is called the lord high chancellor of England. By 5 Eliz. c. 18. the lord chancellor and keeper had one and the same power, and therefore since that statute there cannot be a lord chancellor and lord keeper at the same time; and when seals came in use he had always the custody of the king's great seal, so that his office is created by the mere delivery of the king's great seal into his custody; whereby he become without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedence to every temporal lord. He is a privy counsellor by his office, and prolocutor of the house of lords by prescription. To him belongs the appointment of all the justices of the peace throughout the kingdom; he is a visitor in right of the king, of all hospitals and colleges of the king's foundation; and patron of all the king's livings, under the value of 20 marks a year in the king's books. He is a general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom. And all this, over and above the vast and extensive jurisdiction which he exerciseth in his judicial capacity in the court of chancery. All other justices in this kingdom, are tied to the law, but the chancellor hath the king's absolute power to moderate the written law, governing his judgment by the law of nature and conscience, 3 Black. 46.

In chancery are two courts; one ordinary, being a court of common law; the other extraordinary, being a court of equity. The ordinary or common law court, is a court of record. Its jurisdiction is to hold plea upon a scire facias, to repeal and cancel the king's letters patent, when made against law, or upon untrue suggestions; and to hold plea on all personal actions, where any officer
officer of this court is a party; and of executions on statutes, or of recognizances in nature of statutes; and by several acts of parliament, of divers others offences and causes: But this court cannot try a cause by a jury, but the record is to be delivered by the lord chancellor, into the king's-bench to be tried there, and judgment given thereon. And when judgment is given in this common law part of chancery upon demurrer, or the like, a writ of error is returnable into the king's-bench; but this hath not been practised for many years. From this court also proceed all original writs, commissions of charitable uses, bankrupts, sewers, idiots, lunatics, and the like: and for these ends this court is always open. 3 Black. 47.

The extraordinary court, is a court of equity, and proceeds by the rules of equity and good conscience. This equity consists in abating the rigour of the common law, and giving a remedy in cases where no provision, or not sufficient provision, had been made by the ordinary course of law. The jurisdiction of this court is of vast extent. Almost all causes of weight and moment, first or last, have their determination here. In this court relief is given in the case of infants, married women, and others not capable of acting for themselves. All frauds for which there is no remedy at law, are cognizable here; as also all breaches of trust, and unreasonable or unconscionable engagements. It will compel men to perform their agreements; will remove mortgageors and obligors against penalties and forfeiture, on payment of principal, interest, and costs; will rectify mistakes in conveyances; will grant injunctions to stay waste; and restrain the proceedings of inferior courts, that they exceed not their authority and jurisdiction. 3 Black. 48. This court will not retain a suit for any thing under 10l. value, except in cases of charity, nor for lands under 40s. per annum.

CHANCELLOR OF THE DUCHY OF LANCASTER. His office is principally, in that court, to judge and determine all controversies, between the king and his tenants, of the duchy lands.

CHANCELLOR OF THE EXCHEQUER, sits in the court, and in the exchequer-chamber; and with the rest of the court, orders things to the king's best benefit.

CHANCE-MEDLEY, is the casual killing of a man, not wholly
wholly without the killer's fault, it is also called manslaughter by misadventure, for which the offender shall have his pardon of course. 6 Ed. 1. c. 9. But here is to be considered, whether the person who commits this manslaughter by chance-medley, was doing a lawful thing; for if the act were unlawful it is felony. Chance-medley, is properly applied to such killing as happens to self-defence in a sudden rencounter. 4 Black. 183.

CHANDLER, tallow-chandlers and wax-chandlers are by 24 Geo. Ill. st. 2. c. 41. to take out annual licences. They shall not use melting-houses, without making a true entry, on pain of 100l. and are to give notice of making candles to the excise-officer for the duties, and of the number, &c. or forfeit 50l. See Candles, Excise.

CHAPELS, are of several kinds; private chapels, such as belong to noblemen, &c. free chapels, so called from their freedom or exemption from all ordinary jurisdiction. The king himself visits his free chapels, and not the ordinary; which office of visitation is executed for the king, by the lord chancellor.

Chapels of ease under the mother-church, built for the ease of the parishioners in large parishes. At the foundation of these chapels, it is generally provided that they shall be no prejudice to the mother-church, either in revenues, or in exemption from subordination and dependance.

CHAPELRY, the precincts and limits of a chapel.

CHAPITERS, in the common law, a summary, or content of such matters, as are to be inquired of, or presented before justices in eyre, justices of assize, or of peace, in their sessions.

CHAPLAIN. The king, queen, prince, princess, &c. may retain as many chaplains as they please: and the king's chaplains, may hold any such number of benefices of the king's gift, as the king shall think fit to bestow upon them. By 21 Hen. VIII. c. 13, an archbishop may retain eight chaplains, a duke or bishop sir, marquis or earl five; viscount four; baron or knight of the garter, or lord chancellor three, duchess, marchioness, countess, baroness (being a widow), the treasurer and controller of the king's house, the king's secretary, dean of the chapel, almoner, and master of the rolls, each or them two; the chief justice of the king's-bench, and warden of the cinque-ports one; all which chaplains may purchase a dispensation, and take two benefices. Every judge....
judge of the king's-bench and common-pleasant the chancellor and chief baron of the exchequer; the attorney and solicitor-general; the groom of the stool; treasurer of the king's chamber and chancellor of the duchy of Lancaster may each retain one chaplain, but these chaplains are not entitled to dispensations.

CHARACTER, if one person apply to another for the character of a third person, and a good character is given, yet, if in consequence of this opinion, the party asking the question suffer loss through the person's insolvency, no action lies against him who gave the character if it were fairly given. 1 Esp. Rep. 442.

But if a man wickedly assert that which he knows to be false, and thereby draws his neighbour into a loss, it is actionable. 3 T. R. 351. But if the party giving credit also knew that the party credited was in bad circumstances an action will not lie. 1 Esp. Rep. 290.

CHARGE and DISCHARGE, a charge is a thing done that binds him who does it, or that which is his to the performance thereof: and discharge is the removal of that charge. In all cases where an executory thing is created by deed, there, by consent of all the parties, it may by deed, be defeated and discharged.

CHARITABLE USES, lands given to alms, and aliened, may be recovered by the donor. 13 Ed. 1. c. 41. Lands, &c. may be given for the maintenance of houses of correction, or of the poor. 35 Eliz. c. 7. Money given to put out apprentices, either by parishes, or public charities to pay no duty. 8 Ann. c. 9.

CHARLOTTE (Queen). By 2 Geo. III. c. 1. his majesty is empowered to grant the queen an annuity of 100,000l. for her life, to take place from his majesty's decease.

CHARTA MAGNA, the great charter of liberties granted first by king John, and afterwards, with some alterations confirmed in parliament by king Henry the third. It is so called, either for the excellence of the laws therein contained, or because there was another charter, called the Charter of the Forest, which was the less of the two; or in regard of the great wars and trouble in obtaining it. The said king Henry the third after it had been several times confirmed by him, and as often broken, at last, in the 37th year of his reign confirmed it in the most solemn manner in Westminster-hall. Afterwards King Ed. I. confirming this char-
ter, in the 35th year of his reign, made an explanation of the liberties therein granted to the people; adding some, and in the confirmation, he directed that this charter, should be read twice a year to the people, and sentence of excommunication to be constantly denounced, against all that by word, or deed, or counsel, shall act contrary thereto, or in any degree infringe it.

CHARTER, is a deed whereby the king passeth any grant to any one person or more, or to any body politic.

CHARTER OF FOREST, wherein the laws of the forest, are comprised. Anno 9 Hen. III.

CHARTER LAND, is such as a man holds by charter; that is by evidence in writing, otherwise called, freehold. Stat. 19 Hen. VII. c. 13.

CHARTER-PARTY, is a contract under hand and seal, executed by the freighter and the master or owner of the ship, containing the terms upon which the ship is hired to freight; the masters and owners usually bind themselves, the ship, tackle, and furniture, that the goods freighted shall be delivered (dangers of the sea excepted) well conditioned at the place of discharge; and they also covenant to provide mariners, tackle, &c. and to equip the ship complete and adequate to the voyage. The freighter stipulates to pay the consideration money for the freight, and penalties are annexed to enforce the reciprocal covenants. A charter-party is the same in the civil law, as an indenture at common law; and is distinguished from a bill of lading, in as much as the former adjusts the term of the freight, and the latter ascertains the contents of the cargo.

CHARTIS REDDENDIS, a writ that lies against him who hath charters of feoffment, delivered him to be kept, and refuses to deliver them.

CHASE, a place of receipt for deer and wild beasts, of a middle nature, between a forest and a park. It is not lawful to make a chase, park, or warren, without licence from the king under the broad seal.

CHATEELS or CATALS, all sorts of goods and property, moveable or immovable, except freehold property.

CHAUNTRY-RENTS, rents paid to the crown by the servants or purchasers of chauntre-lands. 22 Ch. II. 16.

CHEAT, a cheat is one who defrauds or endeavours to defraud another
another of his known right, by means of some artful device, contrary to the plain rules of common honesty. By the 30 Geo. II. all persons who knowingly or designedly, by false pretence or pretences, shall obtain from any person money, goods, wares, or merchandizes, with intent to cheat or defraud any person of the same, or shall knowingly tend or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, threatening to accuse any person of a crime punishable by law with death, transportation, pillory, or other infamous punishment, with intent to extort from him any money, or other goods, shall be deemed offenders against law and the public peace; and the court before whom any such offender shall be tried, shall, on conviction, order him to be fined and imprisoned, or be put in the pillory, or publicly whipped, or to be transported for seven years.

CHECK ROLL, a roll or book, containing the names of such as are attendants, and pay in to the king, or other great persons, as their household servants.

CHECKS or DRAFTS, on bankers, are instruments by means of which, a creditor may assign to a third person, not originally party to the contract, the legal as well as equitable interest in a debt raised by it, so as to vest in such an assignee a right of action against the original debtor. 14 H. B. 602. These instruments are uniformly made payable to bearer, which constitutes a characteristic difference between them and bills of exchange; and the legislature has considered them in a more favourable point of view by exempting them from the stamp duties. They are equally negotiable with bills, although strictly speaking, not due before payment is demanded. When given in payment they are considered as cash; and it is said, may be declared upon as a bill of exchange; and the moment this resemblance begins, they are governed by the same principles of law as bills of exchange.

Checks payable on demand, or where no time of payment is expressed, are payable on presentment, without any indulgence or days of grace; but the presentment should be made within a reasonable time after the receipt, otherwise the party upon whom the check is drawn, will not be responsible, and the person from whom the holder received it will be discharged. Therefore, where circumstances will allow of it, it is advisable for the holder of a check to present it on the same day it is received.
CHESTER, where felony, &c. is committed by any inhabitant of the palatine of Chester, in another county, process shall be made to the exigent where the offence was done, and if the offenders then fly to the county of Chester, the outlawry shall be certified to the officers there. 1 Hen. IV. c. 16.

CHERAGE, tribute, head or poll-money.

CHERISANCE, an unlawful bargain or contract. 37 Hen. VIII. c. 9.

CHILDREN, are in law a man's issue begotten on his wife. In case land be given by will to a man and his children, who has such alive, the devisee takes only an estate for life; but if there be no child living, it is held to be an estate tail. 1 Vent. 214.

CHILDWIT, a fine paid to the lord of a manor, for every bastard child begotten in the manor.

CHIMIN, in the law signifies way, and is equally applicable to the king's highway, and to a private way.

CHIMMAGE, a toll for way-farage through the forest.

CHIMNEY-MONEY, or hearth-money, was formerly a duty on houses, but long since repealed.

CHIMNEY-SWEEPERS, the overseers, &c. of any parish, may bind any boy of the age of eight years or upwards, who is chargeable to the parish, to any person using the trade of a chimney-sweeper, till he shall attain the age of sixteen years; provided that it be done with the consent of the parent of such boy. And no master shall have more than six apprentices at one time. Every master, shall cause his name and place of abode, to be put upon a brass plate, and to be fixed upon the front of a leather-cap, which he shall provide for each apprentice, who shall wear the same when out upon his duty; on pain of forfeiting for every such apprentice, above such number, or without having such cap, not exceeding 10l. nor less than 5l.

CHIROGRAPHER OF FINES. The officer in common-pleas, who ingrosses fines in that court, acknowledged into a perpetual record, after they are acknowledged and fully passed by those officers, by whom they were formerly examined, and that write or deliver the indentures of them to the party. This officer also, makes two indentures, one for the buyer and another for the seller, and makes one other indented piece, containing also the effect of the fine, which he delivers over to the custos brevium, that is called
called the foot of the fine. The chirographer also, or his deputy, proclaims all the fines in the court every term, and then repairing to the custos brevium, there indorses the proclamations upon the foot thereof; and always keeps the writ of covenant, and the note of the fine.

CHIVALRY, a tenure of land by knight’s service, whereby the tenant is bound to perform some noble or military office unto his lord.

CHOSE, chose in action, is a thing incorporeal, and only a right; as an annuity, obligation for debt, a covenant, voucher by warranty, and generally all causes of suit for any debt or duty, trespass, or wrong, are to be accounted choses in action.

CHURCH, the place which Christians consecrate to the worship of God. By the common law and general custom of the realm, it was lawful for earls, barons, and others of the laity, to build churches; but they could not erect a spiritual body politic to continue in succession, and capable of endowment, without the king’s licence; and, before the law shall take knowledge of them as such, they must also have the bishop’s leave and consent, to be consecrated or dedicated by him. 3 Inst. 203.

CHURCHWARDENS, the guardians or keepers of the church, are persons annually chosen in Easter week, by the joint consent of the minister and parishioners, or according to the custom of the respective places; to look after the church and church-yard, and things thereunto belonging. They are entrusted with the care and management of the goods and personal property of the church, which they are to order for the best advantage of the parishioners; but they have no interest in, or power over the freehold of the church itself, or of any land or other real property belonging to it; these are the property of the parson or vicar, who alone is interested in their loss or preservation. The churchwardens therefore, may purchase goods and other articles for the use of the parish; they may likewise with the assent of the parishioners, sell or otherwise dispose of the goods of the church, but without such consent, they are not authorised to alienate any of the property under their care. 4 Viner Abr. 526.

All peers of the realm, clergymen, counsellors, attorneys, clerks in court, physicians, surgeons, and apothecaries, are exempt from
from serving the office of churchwarden; as is every dissenting teacher, or preacher, in holy orders, or pretended holy orders.

By 2 Geo. III. c. 20. no serjeant, corporal, drummer, or private man, personally serving himself in the militia, during the time of such service shall be liable to serve as churchwarden.

By the 10 & 11 Wm. c. 23. s. 2. persons who have prosecuted a felon to conviction, and the first assignee of the certificate thereof, are exempted.

No person living out of the parish may be chosen churchwarden. Gibs. 215.

CINQUE PORTS, five ports or havens that lie on the southeast coast of England, towards France; namely Dover, Hastings, Hythe, Romney, and Sandwich; to which were afterwards added, Winchelsea, Seaford, and Rye. They were distinguished from other ports, on account of their superior importance, in consequence of which they are governed by a lord warden of the cinque ports, and have divers privileges granted to them, as a particular jurisdiction, their warden having the authority of admiral among them, and sending out writs in his own name.

Certiorarix, to remove indictments taken in the Cinque Ports, must be directed to the mayor and jurats before whom they were taken, and not to the lord warden, because they hold plea of it as justices of the peace, by virtue of their commission and not by their ancient charter.

CIRCUIT. See Assize.

CIRCUTITY OF ACTION, is when an action is rightfully brought, but in a circuitous way; whereas it might have been as well otherwise answered and determined, and the suit saved.

CIRCUMSTANTIBUS, signifies the supply, or making up of the number of jurors (if any empanelled do not appear; or appearing, be challenged by either party), by adding to them so many other of those that are present, or standing by, as will serve.

CIFATION, is summons to appear, applied particularly to process in the ecclesiastical courts. The party to whom it is directed, shall diligently seek the person to be cited; and when he hath found him, he is to shew him the citation under seal, and by virtue thereof, cite him to appear at the time and place appointed.
CITY, generally signifies such a town corporate, as hath usually a bishop and cathedral church. Formerly there were no cities but all great towns were called burghs.

CITIZENS, of London (see London), may prescribe against a statute, because their liberties are reinforced by statute. 1 Rol. Rep. 105.

CIVIL LAW, is that law which every particular nation, commonwealth, or city, has established peculiarly for itself. The civil law is either written or unwritten; and the written law is public or private; public, which immediately regards the state of the commonwealth, as the enacting and execution of laws, consultations about war and peace, establishment of things relating to religion, &c. private, that more immediately has respect to the concerns of every particular person. The unwritten law, is custom introduced by the tacit consent of the people only, without any particular establishment. The authority of it is great, and it is equal with a written law, if it be wholly uninterrupted, and of a long continuance.

The civil law, is allowed in this kingdom in the two universities, for the training up of students, &c. in matters of foreign treaties between princes; marine affairs, civil and criminal; in the ordering of martial causes; the judgment of ensigns and arms, rights of honour, &c.

CLAIM, a challenge of interest in any thing, that is in the possession of another, or at least out of a man's own; as claim by charter, by descent, &c. By stat. 4 Anne c. 16. sect. 16. no claim or entry shall be of force to avoid any fine levied with proclamation in the common-pleas, or in the court of sessions in the counties palatine, or of grand sessions in Wales, or shall be a sufficient entry to claim within the statute of limitation, 21 Jac. 1. c. 16. unless upon such entry or claim, an action be commenced within one year after making such entry or claim, and prosecuted with effect. Plowd. 359.

CLAMEA ADMITTENDA IN ITINERE PER ATTURNATUM, a writ whereby the king commands the justices in eyre, to admit a person's claim by attorney, who is employed in the king's services, and cannot come in his own person.

CLAVES INSULÆ, the keys of the island, in the Isle of Man, all
all ambiguous and weighty causes are referred to twelve whom they call claves insulae.

CLAUSUM FREGIT, signifies an action of trespass; and so called, because in the writ, such an one is summoned to answer quare clausum fregit, why he made such trespass.

CLERICO ADMITTENDO, a writ to the bishop, for the admission of a clerk to a benefice upon a ne admittetis, tried and found for the party who procureth the writ.

CLERICO CAPTO PER STATUTAM MERCATORUM, &c. a writ directed to the bishop, for the delivery of a clerk out of prison, who is in custody upon a breach of a statute merchant.

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFEC-TU ORDINARIH DELIVERANDO, a writ for the delivery of a clerk to his ordinary, that was formerly convicted of felony, by reason his ordinary did not challenge him according to the privileges of clerks.

CLERICUS SACERDOTIS, a parish-clerk, or inferior assistant to the parochial priest. The parish-clerks were formerly to be men of letters, and to teach a school in the parish.

CLERK OF THE ACTS, a respectable officer in the navy-office, who receives and records all orders, contracts, bills, warrants, and other business, transacted by the lords commissioners of the navy. 22 & 23 Geo. II.

CLERK OF THE AFFIDAVITS, in the court of chancery, is an officer who files all affidavits made use of in court.

CLERK OF THE ASSISE, is he that writes all things judicially done by the justices of assize in their circuits. Clerk of assize is associated with the judge in the commissions of assize. See Assize.

CLERK TO AN ATTORNEY. See Attorney.

CLERK OF THE BAILS, an officer formerly belonging to the court of king's-bench.

CLERK OF THE CROWN, a clerk or officer in the king's-bench, whose function is to frame, read, and record all indictments against traitors, felons, and other offenders, there arraigned or indicted upon public crime.

CLERK OF THE CROWN IN CHANCERY, an officer there who by himself or deputy, is continually to attend the lord chancellor
chancellor, or lord keeper, writes and prepares for the great seal of England, special matters of state by commission, or the like, either immediately from his majesty, or by order of his council as of well ordinary as extraordinary, viz. commissions of lieutenancy, justices itinerant, and of assize of eyre and terminer, goal delivery, and of the peace, with their writs of association, &c. Also all general pardons upon grants of them, at the king's coronation, or at the parliament, where he sits in the lords house in parliament time, into whose office the writs of parliament, made by the clerks of the petty-bag, with the names of the knights and burgesses elected thereupon are to be returned and filed. He hath also the making of all special pardons, and writs of execution upon bonds of statute-staple forfeited.

CLERK OF THE DECLARATIONS, an officer in the court of king's-bench who files all declarations in causes there depending, after they are ingrossed.

CLERK OF THE ERRORS, in the court of common-pleas, transcribes and certifies into the king's-bench, the tenor of the records of the cause of action; upon which, the writ of error (made by the cursitor) is brought, there to be judged and determined. The clerk of the errors in the king's-bench, likewise transcribes and certifies the record of such causes in that court into the Exchequer, if the cause of action were by bill; if by original, the lord chief justice certifies the record in the house of peers in parliament, by taking the transcript from the clerk of the errors, and delivering it to the lord keeper.

The clerk of the errors in the exchequer, transcribes the records, certified thither out of the king's-bench, and prepares them for judgment in the court of exchequer, to be given by the justices of the common-pleas and barons there.

CLERK OF ESSOINS, an officer belonging to the court of common-pleas, who keeps the essoin rolls. See Essoin.

CLERK OF THE ESTREATS, a clerk belonging to the exchequer, who termly receives the estreats out of the lord treasurer's remembrancer's office, and writes them out to be levied for the king. He also makes schedules of such sums, estreated as are to be discharged.

CLERK OF THE HAMPER or HANAPER, an officer in chancery, whose function is to receive all the money due to the king
king for the seals of charters, patents, commissions, and writs, as also fees due to the officers for enrolling and examining the same, &c. His attendance on the lord chancellor or lord keeper is daily required in term time, and at all times of sealing, having with him a leather-bag, wherein are put all charters, &c. after they are sealed; those bags being sealed up with the lord chancellor's private seal, are delivered to the controller of the hanner.

CLERK OF THE JURIES, an officer belonging to the court of common-pleas, who enrolls and exemplifies all fines and recoveries, and returns writs of entry, summons, scisin, &c.

CLERK OF THE JURIES, or JURATA WRITS, an officer belonging to the court of common-pleas, who makes up the writs called habeas corpus, and distinctus, for the appearance of juries, either in court, or at the assizes, after the jury is returned upon the venire facias.

CLERK OF THE MARKET, has no concern but with victuals, but formerly their power was much greater. The court of the clerk of the market, is incident to every fair and market in the kingdom, to determine all disputes, relative to private or civil property,

CLERK OF THE PEACE, an officer attending upon the justices of the peace in the sessions. He must yearly certify into the king's-bench, the names of all persons outlawed, attainted, or convicted of felony. He must also deliver to the sheriff yearly, a schedule of fines and other forfeitures in sessions, and also a duplicate thereof upon oath into the court of exchequer.

CLOCKS AND WATCHES, no dial-plates and cases shall be exported without the movements; and makers shall engrave their names thereon.

CLOTH, no cloth made beyond sea, shall be brought into the king's dominions on pain of forfeiting the same, and the importers incur further punishment. Stat. 12 Ed. III. c. 3. See Drapery and Woollen Manufactures.

COACH. Hackney-coaches, commissioners are appointed to license and regulate them: the proprietor of each coach to pay 10s. per week. Each coach is to be numbered on both sides, the altering of which incurs a penalty of 5l. The same penalty is incurred by driving or letting to hire a coach without a license.
Mourning-coaches and hearses are within the act. The horses in hackney-coaches, must be fourteen hands high. Coachmen compellable to go in the day ten miles; after dark, but two miles and an half on turnpike-roads; to have check-strings, under the penalty of 5l.

The rate for a mile and a quarter, or less is 1s. from that to two miles 1s. 6d. and for each additional half mile entered upon 6d.

In reckoning by time, three quarters of an hour, or less is 1s. between that and an hour 1s. 6d. one hour and twenty minutes 2s. and for each additional twenty minutes entered upon 6d. For a day of twelve hours 14s. 6d. and 6d. for each twenty minutes over.

A coachman refusing to go, or exacting more than his fare, forfeits from lOs. to 5l. By misbehaviour or impudence he incurs the same penalty, and subjects his license to be revoked, and himself to be committed to the house of correction. Persons refusing to pay the fare, or defacing the coach, may be compelled by a justice to make satisfaction. The penalties may be recovered before the aldermen of the city, and justices of the peace, as well as before the commissioners. 4, 7, 10, 11, 12, 24, 26, and 32 Geo. III.

Stage-coaches, every person keeping any public stage-coach shall pay annually 5s. for a license; and keeping any such public stage, without a license, he shall forfeit for every time such carriage is used, 10l. No person licensed, shall by virtue of one license, keep more than one carriage, on penalty of 10l. Every licensed stage-coach shall pay, twopence halfpenny for every mile it travels. Every person licensed shall paint, on the outside pannel of each door, his christian and surname, with the name of place from whence he sets out, and to which he is going, on pain of 10l. Should he discontinue such carriage, he shall give seven days previous notice, and have such notice indorsed upon his license, and from thenceforth shall be no longer chargeable.

Drivers of stage-coaches, are not to admit more than one outside passenger on the box, and four on the roof of the coach, on the penalty of 5s. for each passenger at every turnpike-gate. See Taxes.

COACHMAKER, the wares of coachmakers shall be exami-
emined by persons appointed by the saddler's company. 1 Jac. c. 22. And every coachmaker shall take out an annual license from the excise-office, and pay a duty of 20s. for every four-wheeled carriage, and 10s. for every two-wheeled carriage built by him for sale.

COACHMAN, opening and partly destroying a parcel left in his coach is guilty of felony.

COALS. Sea-coal brought into the Thames, shall be sold by the chaldron containing thirty-six bushels heaped up, according to the bushel sealed for that purpose at Guildhall.

Coals within the bills shall be carried in linen sacks, sealed by the proper officer, which shall be at least four feet four inches in length, and twenty-six inches in breadth: and sellers of coals by the chaldron, or less quantity, shall put three bushels of coals into each sack. 3 and 32 Geo. II. c. 26. and 27.

All sellers of coals, are to keep a lawful bushel, which bushel and other measures shall be edged with iron and sealed; and using others, or altering them, incurs a forfeiture of 50l.

Any purchaser dissatisfied with the measure of any coals, may, on delivery to him of the meter's ticket, have the same re-measured, by sending notice thereof to the seller, and to the land coal-meter's office for the district in which the coals were sold; on which a meter (not being the same under whose inspection the coals were originally measured) must within two hours attend to re-measure the coals, and shall re-measure the same sack by sack, in the presence of the seller and purchaser (if they attend), and also in the presence of a meter from the two other districts (whose attendance within London and Westminster is enforced by a penalty of 5l. but not in Surrey); for this attendance, the purchaser is to pay each coal-meter attending, sixpence per chaldron. If the coals prove deficient in measure, the seller shall forfeit 5l. for every bushel deficient, and also forfeit the coals to the poor. The meter under whose inspection the coals were measured at the wharf, shall also forfeit 5l. per bushel deficient, to be recovered (if not in five days) of the principal coal-meter; and coal-porters 2s. 6d. per bushel. The carman is to be paid 2s. 6d for his horses, &c. for each hour, whilst the coals are re-measuring.

Any coal-factor receiving, or coal-owner giving any gratuity, for buying or selling any particular sort of coals, and selling one kind
kind of coals for and as a sort which they really are not, shall forfeit 500l. 3 Geo. II. c. 26.

Owners or masters of ships shall not enhance the price of coals in the river Thames, by keeping turn in delivering coals there, under the penalty of 100l. 4 Geo. II. c. 30. Contracts between coal-owners, &c. and merchants of ships for restraining the buying of coals are void, and the parties shall forfeit 100l. 9 Ann. c. 28.

Wilfully and maliciously setting on fire, any mine, pit, or delph of coal, or cannel-coal, is felony without benefit of clergy. 10 Geo. II. c. 32.

Setting fire to, demolishing, or otherwise damaging any engine or any other thing belonging to coal-mines, is felony and transportation for seven years. 9 Geo. III. c. 29.

COCKET, COCKETUM, COCKETUM. The custom-house or office, where goods to be transported are first entered, and pay their custom, and are to have a cockett, signifying their merchandizes are customed, and may be discharged. See Custom-House.

CODICIL, a schedule or supplement to a will. See Will.

COFFERER OF THE KING'S HOUSEHOLD, next under the controller, who superintends and pays the other officers of the household their wages.

COGNISOR or CONNUSOR, he that passeth or acknowledgeth a fine of lands or tenements to another. Cognisee or consuee, is he to whom the fine is acknowledged.

COGNISANCE, sometimes signifies an acknowledgment of fine, and sometimes a power or jurisdiction, as cognisance of pleas, is an ability to call a cause or plea out of another court, which no one can do but the king, except he can shew charters for it.

COGNITIONIBUS MITTENDIS, a writ to one of the king's justices of the common-pleas, or other that has power to take a fine, and who having taken it, delays to certify the same, commanding him to certify it.

COGNOVIT ACTIONEM, is an acknowledgment by a defendant, or confession that the plaintiff's cause of action is just, and who to save law expences suffers judgment to be entered against
against him; in this case the confession generally extends to no more than is contained in the declaration, with costs.

COIF. The serjeants at law, are otherwise called, serjeants of the coif; from the lawn coif they wear on their heads, under their caps, when they are created, and always after.

COIN, metallic money, struck with a mark, effigy or inscription, from which its weight, title, and value are known; and though the material of which it is composed, were melted into any other form, still it would preserve the same value, or very nearly so.

Counterfeiting the king’s money, or bringing false money into the realm counterfeit to the money of England, clipping, washing, rounding, filing, impairing, diminishing, falsifying, scaling, lightening, edging, colouring, gilding, making, mending, or having in one’s possession, any puncheon, counter-puncheon, matrix, stamp, dye, pattern, mould, edger, or cutting-engine: all these incur the penalty of high treason. And if any person shall counterfeit any such kind of gold or silver, as are not the proper coin of the realm, but current therein by the king’s consent, he shall be guilty of high treason.

If any person shall tender in payment any counterfeit coin, he shall for the first offence, be imprisoned six months; for the second offence two years; and for the third offence shall be guilty of felony without benefit of clergy.

Blanching copper or other base metal, or buying or selling the same; and receiving or paying money at a lower rate than its denomination doth import; and also the offence of counterfeiting copper halfpence and farthings; incur the penalty of felony, but within clergy. Counterfeiting coin not the proper coin of this realm not permitted to be current therein, is misprision of treason. A person buying or selling, or having in his possession, clippings or filings, shall forfeit 500l. and be branded in the cheek with the letter R. And any person having in his possession a coinage-press, or casting bars or ingots of silver in imitation of Spanish bars or ingots, shall forfeit 500l.

A reward of 40l. is given for convicting a counterfeiter of the gold or silver coin; and 10l. for a counterfeiter of the copper coin. 16 Geo. II. and 13 Geo. III. c. 28. and 77.

COLIBERTUS,
COLIBERTUS, a tenant, who held his freedom of tenure, under condition of particular works and services.

COLLATERAL assurance is that, which is made over and beside the deed itself. See Security.

COLLATION OF A BENEFICE, the bestowing of a benefice by the bishop, who has it in his own gift or patronage. See Adweson.

COLLATIONE FACTA UNI POST MORTEM ALTE-RIUS, a writ directed to the justices of the common-pleas, commanding them to direct their writ to a bishop, for the admission of a clerk in the place of another presented by the king, who died during the suit between the king and the bishop's clerk.

COLLEGE, a particular corporation, company, or society of men, having certain privileges founded by the king's licence.

Colleges in the universities are generally lay corporations, although the members of the college, may be all ecclesiastical. 2 Salk. 672. And in the government thereof, the king's courts cannot interfere, where a visitor is specially appointed. 1 Black. 483.

The two universities, in exclusion of the king's courts, enjoy the sole jurisdiction over all civil actions and suits, except where the right of freehold is concerned; and also in criminal offences or misdemeanours under the degree of treason, felony, or maim. 3 Black. 83. Their proceedings are in a summary way, according to the practice of the civil law. Wood. b. 4. c. 2. But they have no jurisdiction unless the plaintiff or defendant be a scholar or servant of the university, and resident in it at the time. An appeal lies from the chancellor's court to the congregation, thence to the convocation, from thence to the delegates.

COLLEGIATE CHURCH, a church built and endowed for a society, or a body corporate of a dean, or other president, and secular priests, as canons, or prebendaries in the same church.

COLLOQUIUM, the affirming of a thing, laid in declarations, as for words in actions of slander, &c.

COLLUSION, a deceitful agreement or compact between two or more, for the one party to bring an action against the other to some evil purpose, as to defraud a third of his right.

COLONIES. See Plantations.

COLOUR, in a legal acceptation, a probable plea, but false.
in fact, and hath this end to draw the trial of the cause from the jury to the judges.

COLOUR OF OFFICE, generally signifies an act evilly done by the countenance of an office, whereas the office is but as a trick to give plausibility to the falsehood. Plowd. 64. a.

COMBARONES, the fellow-barons or commonalty of the cinque ports; this title is restrained from the common inhabitants, to distinguish their representatives in parliament.

COMBAT. See Battel.

CONBINATIONS, are persons assembled together unlawfully, with an intent to do unlawful acts, and these offences are punishable before such acts are carried into effect, in order to prevent the consequence of combinations, and conspiracies. 9 Rep. 57.

COMBUSTIA PECUNIÆ, the ancient method of trying mixed and corrupt money, Temp. H. II. by melting it down, upon payment into the exchequer.

COMITATU COMMISSO, a writ or commission, whereby the sheriff is authorised to take upon him the command of the county.

COMITATU ET CASTRO COMMISSO, a writ whereby the charge of a county together with the keeping of a castle, is committed to the sheriff.

COMMANDMENT, of the justices, is either absolute or ordinary.

Absolute, as when upon their own authority, in their wisdom and discretion, they commit a man to prison for a punishment. Ordinary is when they commit him rather for safe custody than as a punishment: and a man committed upon an ordinary commandment is bailable. Staund. pl. cor. 73. commandment is also used for the offence of one encouraging another to transgress or do any thing contrary to law, as theft, murder, and such like. See Accessary.

COMMANDRY, was any manor or chief messuage with lands and tenements appertaining thereto, belonging to the priory of St. John of Jerusalem in England.

COMMEATURA, a commandry, for the accommodation of the knights templars.

COMMENDAM, a benefice or church-living, being either void,
void, or to prevent it's becoming void, is commended to the charge of some sufficient clerk, to be supplied, till it may be conveniently provided with a pastor. When a parson is made bishop, there is a cession of his benefice by the promotion; but if the king give him power to retain his benefice, he shall continue parson, and is said to hold it in commendam; but it must be always before consecration; for afterwards it comes too late, because the benefice is then absolutely void.

COMMENTARY, one that has a church-living in commendam.

COMMENDATORY LETTERS, are such as are written by one bishop to another in behalf of any of his clergy, or other of his diocese, travelling thither, or that the clerk may be promoted, &c.

COMMENDATUS, one who lives under the protection of a great man.

COMMINALTY, are such of the commons, as, raised beyond the common peasants, come to have the managing of offices, and by that means are a degree under burgesses.

COMMISARY, a title of ecclesiastical jurisdiction, appertaining to one who exercises spiritual jurisdiction in places so remote from the chief city, that the chancellor cannot call the subjects to the bishops principal consistory, without subjecting them to great inconvenience.

COMMISSION, is taken for the warrant or letters patent, that all men exercising jurisdiction either ordinary or extraordinary, have for their power to hear or determine any cause or action; thus the judges and most of the great officers judicial and ministerial of this realm, are made by commission.


Commissioners of the Great Seal, persons appointed to execute the office of lord chancellor. See 1 W. & M. sess. 1. c. 21.

COMMITMENT, is the sending a person to prison by warrant or order, either for a crime or for contumacy. If for a crime the warrant must be until discharged according to law; but for contumacy, until he comply, and perform the thing required. Carth. 153. The commitment should be in writing, otherwise by
the habeas corpus act, the prisoner may be admitted to bail whatever his offence may have been. 1 Burn. 379.

Who may commit. Wheresoever a constable or person may justify the arresting another for a felony, or treason, he may justify the sending him or bringing him to the common goal. 2 Haw. 116. But it is most adviseable, for any private person who arrests another for felony, to cause him to be brought as soon as possible before some justice of peace, that he may be committed or bailed by him. Dall. c. 118.

The privy-council, or any one or two of them, or a secretary of state, may lawfully commit persons for treason, and for other offences against the state. 2 Haw. 117.

To what place. All felons shall be committed to the common goal and not elsewhere. 5 Hen. IV. c. 10. But vagrants and other criminals, offenders, and persons charged with small offences, may, for such offences, or for want of sureties, be committed either to the common goal or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

Who may be committed. All persons who are apprehended for offences not bailable, and those who neglect to offer bail for offences which are bailable, must be committed; and wheresoever a justice of peace is empowered to bind a person over, or to cause him to do a certain thing, he may commit him, if in his presence he shall refuse to be so bound, or do such a thing. 2 Haw. 116.

Observations respecting commitment. A commitment must be in writing, either in the name of the king, and only tested by the person who makes it; or it may be made by such person in his own name, expressing his office or authority, and must be directed to the goaler or keeper of the prison. 2 Haw. 119. The commitment should contain the name and surname of the party committed, if known; if not known, it may be sufficient to describe the person by his age, &c. and to add, that he refuses to tell his name. 1 H. H. 557. It ought to contain the cause as for treason or felony, or suspicion thereof; and also the special nature of the felony, briefly, as for felony for the death of such an one, or for burglary, in breaking the house of such an one. 2, H. H. 122. A commitment must also have an apt conclusion; as if it be for felony, till he be thence delivered by due course of
of law. 2 H. H. 123. All commitments grounded on acts of parliament ought to be conformable to the method prescribed by them. 2 Haw. Not. 33. And where a statute appoints imprisonment, but does not limit the time, in such case the prisoner must remain at the discretion of the court. Dalh. c. 170.

The duty of a goaler respecting commitments. If the goaler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of goal delivery. 4 Ed. III. c. 9. But no person can justify the detaining a prisoner in custody, out of the common goal, unless there be some particular reason for so doing; as if the party should be so dangerously ill, that it would apparently hazard his life to send him to goal, or that there be evident danger of a rescue from rebels or the like. 1 Haw. 118. By the 3 Hen. VII. c. 3, the sheriff or goaler, shall certify the commitment to the next goal delivery.

By the habeas corpus act, the charge of conveying an offender, is limited not to exceed 12d. a mile.

Commitment discharged. A person legally committed for a crime, certainly appearing to have been done by some person or other, cannot be lawfully discharged but by the king, till he be acquitted upon his trial, or have an ignoramus found by the grand jury, or none shall prosecute him, on a proclamation for that purpose by the justices of goal delivery. 2 Haw. 121.

COMMON, is a right of privilege which one or more persons claim to take or use, in some part or portion of that, which another man's lands, waters, woods, &c. naturally produce; without having an absolute property in such lands, woods, waters, &c.

Of the several kinds of commons. The general division, of common, is into common of pasture, which is a right or liberty that one or more have to feed or fodder their beasts or cattle in another man's land. Common of turbary, or a liberty of cutting turves in another man's land or soil. Common of piscary, or a right and liberty of taking fish in another's fish-pond, pool, or river. Common of esivers, which is a right of taking trees or loppings, shrubs, and underwood, in another's woods, coppices, &c. and lastly, a liberty which the tenants have in some manors,
of digging and taking sand, gravel, stone, &c. in the lord's soil. 1 Bac. Abr. 385.

But the word *common* is usually understood of common of pasture, of which there are four kinds; *common appendant*; *common appurtenant*; *common in gross*; and *common by reason of vicinage*.

*Common appendant*, is a right belonging to the owners or occupiers of arable land, to put commonable beasts upon the lord's waste, and upon the lands of other persons within the same manor. Commonable beasts, are either beasts of the plough, or such as manure the land. 1 Inst. 122.

*Common appurtenant*, can only be claimed by prescription, and is a right of commonage for beasts, not only commonable, as horses, oxen, cows, and sheep, but likewise for beasts not commonable, as swine, goats, and geese. Co. Lit. 122.

*Common in gross*, is a right of commonage which must be claimed by deed or prescription, and has no relation to any land belonging to the commoner; it may be for a certain number of cattle, or without number. He that hath *common in gross* for a certain number of cattle, may put in the cattle of a stranger, and use the common with them. 2 Inst. 427. 2 Rol. Abr. 402.

*Common by reason of vicinage*, is a liberty that the tenants of one lord, in one town, have to common with the tenants of another lord in another town. Those who challenge this kind of common (which is usually called intercommoning) may not put their cattle in the common of the other town; for then they are distrainable; but turning them into their own fields, if they stray into the neighbour common, they must be suffered. Cowel.

*How far the commoner is interested in the soil*, a commoner hath only a special and limited interest in the soil, but yet he shall have such remedies as are commensurate to his right; and therefore may distrain beasts *damage- feasant*, bring an action on the case, &c. but not being absolute owner of the soil, he cannot bring a general action of trespass, for a trespass done upon the common. Nor can he do any thing to the soil which tends to the melioration or improvement thereof, as cutting down of bushes, fern, &c. Commoner may abate hedges made on his common; and may drive the beasts of a commoner mixed with the beasts of a stranger.
a stranger to a convenient place to sever them, and may drive the beasts of the stranger out of the common, without any cus­
tom. Godb. 125. 2 Mod. 65. 3 Lev. 40. It is a general rule, that a commoner cannot distrain or chase out the cattle of the lord, or terre tenant, damage-feasant; and if the lord surcharge the common, his proper remedy is an action on the case. Godb. 182.

COMMON INTENDMENT, is common meaning or understand­ing according to the subject matter, and not strained to an extraordinary or foreign sense.

COMMON LAW. The common law of England, is the com-
mon rule for administering justice within this kingdom, and as-
serts the king's royal prerogatives, and likewise the rights and li-
berties of the subject: it is generally that law by which the de-
termination in the king's ordinary courts are guided. It is dis-
istinguished from the statute laws or acts of parliament, as hav-
ing been the law of the land, before any acts of parliament which are now extant were made. Hale's Hist. 24. 44. 45.

COMMON PLEAS, pleas or suits are regularly divided into two sorts; pleas of the crown, which comprehend all crimes and misde­
meanours wherein the king (on behalf of the public) is plaintiff; and common-pleas, which include all civil actions de­
dpending between subject and subject. The former of these were the proper object of the court of king's-bench, the latter of the court of common-pleas, and in this court only can real actions, that is actions which concern the right of freehold or the reality, be originally brought; and in this court also, all other or personal pleas between man and man are determined, but in some of these the court of king's-bench hath a concurrent authority. But a writ of error, in the nature of an appeal, lies from the court of common-pleas to the court of king's-bench. 3 Black. 37. This court can hear and determine causes removed out of inferior courts by pone, recordare, or other like writs. They can also grant pro-
hibitions, to keep other courts as well ecclesiastical as temporal, within due bounds.

In this court are four judges, created by letters patent; the seal of the court is committed to the custody of the chief jus­
tice.

COMMON PRAYER. It is the particular duty of a clergy-
man
man every Sunday, &c. to use the public form of prayer, prescribed by the book of common prayer. And the 13 & 14 Ch. II. enacts that every incumbent residing upon a living and keeping a curate, shall at least once a month, publicly read the common prayer, and if there be occasion, administer the sacraments, and other rights of the church, on pain of 5l. to the poor, on confession or conviction thereof before two justices.

COMMON RECOVERY. See Fine.

COMMONWEAL, the public good. The law tolerates many things to be done for common good, which otherwise might not be done; and hence it is that monopolies are void in law, and that bonds and covenants to restrain free trade, tillage, or the like, are adjudged void. 11 Co. Rep. 50.

COMMORANCY, a dwelling in any place, as an inhabitant of a house in a villa. Commorancy for a certain time may make a settlement in a parish. 4 Black. 278.

COMMOTE, in Wales, is half a cantred or hundred, containing fifty villages. See Cantred.

COMMUNITAS REGNI. See Commually.

COMPOSITION, an agreement or contract between a parson, patron, and ordinary, &c. for money or other things in lieu of tithes. The compositions for tithes, made by the consent of the parson, patron, and ordinary, by virtue of 13 Eliz. c. 10, shall not bind the successor unless made for twenty-one years or three lives, as in case of leases of ecclesiastical corporations, &c.

COMPRINT, usually means, a surreptitious printing of another's copy. See Books.

COMPROMISE, a mutual promise of two or more parties at difference, to refer the ending of their controversies, to the arbitrament and equity of one or more arbitrators. See Arbitration.

COMPOSITION, an agreement between a debtor and creditor, to accept a certain sum in discharge of all demands. It has been questioned, whether even agreement by creditors to take a composition in discharge of their debts, be not binding, though no fund be appropriated for the payment of the composition. 6 T. R. 263.

COMPURGATOR, one who by oath justifies another's innocence. See Oath.

COMPUTATION is used in the common law, for the true ac-
count and construction of time, so that neither the one party nor
the other shall do wrong, nor the determination of time referred
at large, be taken one way or other; but computed according to
the best judgment of the law.

CONCEALERS, such as find out concealed lands, which are
kept from the king by common persons, having nothing to shew
for their title or estate therein. 39 Eliz. c. 22. & 21 Jac. c. 2.

CONCORD, the agreement between parties, that intend the
levying of a fine of lands one to the other, how and in what man­
er the land shall pass.

CONCUBINAGE, is used as an exception against one suing
for dower, alleging thereby, that she was not a wife, lawfully
married to the party, in whose lands she seeks to be endowed,
but his concubine.

CONDITION, a restraint annexed to a thing, so that by the
non-performance the party to it shall sustain loss, and by the
performance receive advantage; or it is a restriction of men's acts,
qualifying or suspending the same, and making them uncertain
whether they shall take effect or not. Also it is defined to be,
what is referred to a contingency, which may or may not take
place.

CONE AND KEY, accounts and key. A woman at the age
of 14 or 15, might take the charge of her house and receive cone
and key, so that a woman was held to be of competent years,
when she was able to keep the accounts and key of her house.

CONFEDERACY, is when two or more confederate, to do
any damage or injury to another, or to commit any unlawful act.
And though a writ of confederacy do not lie if the party be not
indicted and in a lawful manner acquitted, yet false confederacy
between divers persons shall be punished, though nothing be put
in execution.

CONFESsION OF OFFENCE, is when a prisoner is appealed
or indicted of treason or felony, and brought to the bar to be ar­
raigned, and his indictment being read to him, the court de­
mands what he can say thereto: then either he confesses the of­
fence, and the indictment to be true, or pleads not guilty.

Confession, is two fold, either express or implied. An express
confession is, where a person directly confesses the crime with
which he is charged, which is the highest conviction that can be.
But it is usual for the court, especially if it be out of clergy, to advise the party to plead, and put himself upon his trial, and not immediately to record his confession, but to admit him to plead. 2 H. H. 225. An implied confession is, where a defendant in a case not capital, does not directly own himself guilty, but in a manner admits it, by yielding to the king's mercy, and desiring to submit to a small fine; which submission the court may accept if they think fit, without putting him to a direct confession. 2 Haw. 233.

Confession in a civil action. Sometimes there is a confession in a civil action, but not usually of the whole complaint, for then the defendant would probably end the matter sooner, or not plead at all, but suffer judgment to go by default; but sometimes, after tender and refusal of debt, if the creditor harass his debtor with an action, it then becomes necessary for the defendant to confess the debt and plead the tender; for a tender by the debtor, and refusal by the creditor, will in all cases discharge the costs. 4 Black. 303. So in order to strengthen the creditor's security, it is usual for the debtor, to execute a warrant of attorney to confess judgment in an action to be brought by such creditor; which judgment when confessed, is compleat and binding. 3 Black. 397.

CONFIRMATION, is a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Thus a bishop grants his chancellorship by patent; for the term of the patentee's life; this is no void grant, but voidable by the bishop's death, except it be strengthened by the confirmation of the dean and chapter. 2 Black. 325.

CONFISCATE, if a man be indicted that he feloniously stole the goods of another man, when in truth they are the proper goods of him indicted, and which being brought into court against him, he disclaims them, by this disclaimer he shall lose the goods, although afterwards he be acquitted of the felony, and the king shall have them as confiscated. Stannif. pl. cor. l. c. 24.

CONGE' D'ESLIRE. The king's permission royal to a dean and chapter, in time of vacation, to choose or elect a bishop. See Bishop.

CONJURATION. The using of witchcraft, conjuration, &c.
was made felony by the 1 Jac. c. 12. but that superstitious statute having produced many pernicious effects, it was wisely repealed by the 9 Geo. II. c. 5. wherein it is enacted, that no prosecution, suit, or proceeding shall be commenced, or carried on, against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence, in any court whatever.

But, by the same statute, if any person shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration; or undertake to tell fortunes; or pretend from his skill or knowledge in any occult or crafty science, to discover where, or in what manner, any goods or chattels supposed to have been stolen or lost, may be found; every person so offending, being convicted on indictment or information, shall suffer imprisonment for a year without bail or mainprize, and once in each quarter of the year, in some market town of the proper county, upon the market-day there, stand openly on the pillory for one hour; and shall also, (if the court by which such judgment shall be given shall think fit) be obliged to give sureties for his good behaviour, in such sum and for such time, as the court shall judge proper, according to the circumstances of the offence; and in such case shall be further imprisoned, till such sureties shall be given. 4 Black. 60.

CONSANGUINITY, or kindred, is the connexion or relation of persons descended from the same stock or common ancestor; and is either lineal or collateral. Lineal consanguinity, is that which subsists between persons, of whom one is descended in a direct line from the other, as grandfather, father, and son. Collateral consanguinity, is that which subsists between persons descended from the same common ancestor, but not from one another; as brothers, uncles, and nephews. 2 Black. 204.

CONSENT, in all cases where any thing executory is created by deed, it may by consent of all persons that were parties to the creation of it, by their deed be defeated and annulled. 1 Rep. 113.

CONSEQUENTIAL LOSSES OR DAMAGES. It is a fundamental principle of law and reason, that he who does the first wrong, shall answer for all the consequential damages. 12 Mod. 639. But this admits of limitation. Though a man do a lawful thing
thing, yet, if any damage thereby befall another, he shall answer if he could have avoided it.

CONSERVATOR OF THE PEACE, before justices of the peace were appointed (Temp. Ed. III.) there were persons that by the common law, had interest in keeping the peace, some of these were therefore named custodes pacis, wardens or conservators of the peace.

CONSIDERATIO CURIÆ, is the judgment of the court.

CONSIDERATION, is the material cause of a contract, without which it would not be effectual or binding. Consideration in contracts, is something given in exchange, something that is mutual and reciprocal; as money given for goods sold, work performed for wages. And a consideration of some sort or other is so absolutely necessary to the forming a contract, that a nullem pactum, or agreement to do or pay any thing on one side, without any compensation on the other, is totally void in law; and a man cannot be compelled to perform it. 2 Black. 445. A consideration is necessary to create a debt, otherwise it is a nullem pactum. Jenk. 290. in pl. 27.

CONSIGNMENT, the sending, delivering over goods, money, or other property, to another person. It may be either consigned unconditionally, or for some particular purpose. Consigned goods are supposed in general, to be the property of him, by whom they are consigned, but to be at the disposal of him, to whom they are consigned.

CONSIGLUM, is now used to signify a speedy day appointed to argue a demurrer; which the court grants after the demurrer joined, on reading the records of the cause.

CONSISTORY, a tribunal; every archbishop and bishop of every diocese hath a consistory court, held before his chancellor or commissary in his cathedral church, or other convenient place of his diocese, for ecclesiastical causes. From the bishop's court the appeal is to the archbishop; from the archbishop's court to the delegates.

CONSOLIDATION, is used for uniting two benefices into one.

CONSPIRACY, is the act of those that confederate or bind themselves by oath, covenant, or other alliance, that every of them
them shall aid and bear the other falsely and maliciously, to indict, or cause to be indicted, or falsely to move or maintain pleas. From which it seems clearly to follow, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, (whereupon he is lawfully acquitted) are properly conspirators; but that those also are guilty of this offence who basely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such confederacy or not. 1 Hau. 189. For this offence the conspirators (for there must be at least two to form a conspiracy) may be indicted at the suit of the king, and may be sentenced to fine, imprisonment, and pillory. 4 Black. 136.

CONSTABLE, by the laws of Alfred, the freemen were to distribute themselves into decennaries, and hundreds; and every ten freeholders chose an annual officer, whom they called constable, borsholder, tithingman, or headborough, as the head of the decennary or ten. These in every hundred where there was a feudal lord, were sworn in and admitted by the lord or his steward, in his leet; but where there was no feudal lord, the sheriff, in his torn had the swearing of them in. So if there were no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred and was called the high constable.

Who may or may not be chosen constables. The ancient officers of any of the colleges in the two universities are exempted from this office. Doug. 531. Any person of the age of 63 years or upwards, is not compellable to serve the office of constable within the city of Westminster. No person born out of the kingdom of England or the dominions thereof (except he be born of English parents, see Aliens), is eligible to serve this office, even though he be naturalized. 5 Bur. 2790. Counsellors, attorneys, and all other officers whose attendance is required in the courts of Westminster-hall, aldermen of London, the president and fellows of the fellowship of physic in London, surgeons and apothecaries in London, and within seven miles thereof being free of the company of apothecaries, and teachers, or preachers in holy orders, in a congregation legally tolerated, shall be exempted from the office of a constable. The prosecutor of a felon to conviction, or the person to whom he shall assign the certificate thereof, shall be discharged from the office of constable.

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But
But generally speaking, every housekeeper, inhabitant of the parish, and of full age, is liable to fill the office of constable: he ought however to be of the abler sort of parishioners, as being more likely to perform his duty with probity and discretion. 3 Co. 42.

Mode of choosing constables. It seems regularly, that the petty constable ought to be chosen in the leet and the high constable in the torn which is the general leet of the whole hundred; and if there be no leet, then, that the petty constable ought to be chosen also in the torn. 1 Burn. 400.

The high constables of hundreds are generally chosen either at the sessions, or by the greater number of the justices of the division; and they may be sworn at sessions, or by warrant from the sessions, which course has often been allowed and commended, by the justices of assize. Dalt. c. 28. The office of petty constable, being very necessary for the preservation of the peace, the justices of the peace have ever since the institution of their office, taken upon them as conservators of the peace, not only to swear the petty constables who have been chosen at a torn or leet, but also to nominate and swear those, who have not been chosen at any such court, on neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. And this power of the justices, having been confirmed by the uninterrupted usage of many ages, shall not now be disputed. 2 Haw. 65.

The office, duty, power, &c. of constables. The original and proper authority of a high constable, as such, seems to be the very same within his hundred, as that of the petty constable within his vill. The other branches of his office, such as the surveying of bridges, levying county rates, the issuing precepts concerning the appointment of the overseers of the poor, surveyors of highways, assessors and collectors of the land-tax and window duties, &c. are in him, not of necessity, but as matter of convenience. 4 Inst. 265. Every high and petty constable, is by common law a conservator of the peace. 2 Haw. 33. The general duty of constables is to preserve the king’s peace in their several districts, for which purpose they are armed, as well by the common law as by the legislature, with the very large and serious powers of arresting and imprisoning their fellow-subjects, forcibly entering their dwellings, and other extensive authorities, which
which it is highly their duty to exercise with becoming moderation, and humanity. The high constable, is as much the officer of the justices of the peace, as the constable of the vill. Fort. 128.

The constable is the proper officer to the justices of peace and bound to execute his warrants. Hence it has been resolved, that where the statute authorities a justice of the peace to convict a man, of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. 2 Haw. 262.

But as the office of constable is by no means judicial, but wholly ministerial, he may execute such warrants, &c. directed to him, by deputy, if on account of indisposition, absence or other special cause, he cannot conveniently do it in person. 2 Bur. 1259.

The high constables shall, at the general or quarter-sessions, if required, account for the general county rate by them received, on pain of being committed to goal till they shall account, and shall pay over the money in their hands, according to the order of the said court, on like pain of imprisonment. And all their accounts and vouchers shall, after having been passed at such sessions, be deposited with the clerk of the peace, to be kept among the records; and be inspected by any justice without fee. 12 Geo. II. c. 29. s. 8.

Constables should be very careful to keep in their custody, whatever things they take upon felons; the same caution is to be observed, in respect of such stolen goods as they take in the execution of such warrants. The law strictly requires this, that they may be produced in evidence upon the trial of the prisoner: for the identity of such things is to be proved upon the constable’s oath, as well as the time when taken, and place where: if therefore he suffer such goods to go even out of his sight, he weakens his evidence, if he do not destroy it; and should the goods be by accident, or otherwise lost, he is not only answerable to the court for acting wrong, which may defeat the prosecution, but also to the prosecutor for the value of the goods; nor will it be a sufficient plea to the court that he left them in the hands of justice, even by his command; for as they were taken by him, the law requires them at his hands. And as the goods, taken on per-
sons charged with felony, or by search-warrants, are, as the law terms it, in abeyance; after the jury have returned their verdict, if the prisoner be convicted, the constable is to deliver such goods to the prosecutor; on the contrary, if the prisoner be acquitted, the goods revert to him, the cause of seizure being discharged. But if any difficulty should arise the safest way is to pray the direction of the court. The duty of the constable indeed, absolutely obliges him to produce such goods at the trial; but after this is over, he should be careful how he brings them out of court, lest he should suffer by actions at law, from both parties.

An officer who has negligently suffered a prisoner to escape, may take him wherever he finds him, without mentioning any fresh pursuit.

A person found guilty, upon an indictment or presentment of a negligent escape of a criminal, actually in his custody, is punishable by fine and imprisonment, according to the quality of the offence. 2 Haw. 134.

But a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; so that the offence was but a trespass at the time of the escape: but the officer may be fined to the value of his goods. Dalt. c. 129.

An action brought against a constable, headborough, or tithing-man, for any matter done by virtue of their office, shall be laid in the county where the fact was committed, and not elsewhere. 21 Jac. c. 12. s. 5.

The constable executing a justice's warrant, for levying a penalty, or other sum of money directed by an act of parliament, by distress, may deduct his own reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand. 27 Geo. II.

The sheriff or steward of the leet, having power to place a constable in his office, has consequently a power of removing him. 2 Haw. 63. And it has been the practice of the justices of the peace, for good cause, to displace such constables as have been chosen, and sworn by them. 2 Haw. 65.

If a constable shall continue more than a year in his office, the sessions may discharge him, and put another in his place, till the
lord shall hold a leet, and should the court, or judge, refuse to discharge a constable, the king's-bench may compel them by mandamus. 2 Haw. 65.

In the manner that constables are chosen, they may be removed, and by the like authority; therefore, if there should be cause to remove an high constable, it has not been thought fit that any one or two justices should do it upon their discretion; but that it should be done by the greater part of the justices of that division, or at the sessions. Dalt c. 28.

Of London constables. The constables must be freemen of the city, and nominated by the inhabitants of the ward on St. Thomas's day, confirmed or disallowed at the next wardmote, and afterwards sworn into office at the next court of aldermen on the Monday ensuing twelfth-day.

They swear to keep the king's peace to the utmost of their power, to arrest affrayers, rioters, and such as make contests to the breach of the peace, and carry them to the house of correction, or compter of one of the sheriffs; and in case of resistance, to make outcry to them, and pursue them from street to street, and from ward to ward till they are arrested: to search for common nuisances in their respective wards, being required by scavengers, &c. and upon request, to assist the beadle and raker in collecting their salaries and quarterage, to present to the lord mayor and ministers of the city, defaults relating to the ordinances of the city. They are to certify to the mayor's court, once a month, the names and surnames of all freemen deceased, and also of the children of such freemen, being orphans. They are to certify the name, surname, place of dwelling, profession and trade of every person who shall just come into the ward, and keep a roll thereof; for which purpose they are to enquire once a month, into what persons are come into the said ward; and if such persons are found to be ejected from any other ward for any misdemeanor, and refuse sureties for their good behaviour, they are to give them and their landlords warning to depart; and on refusal, they may be imprisoned, and the landlords fined a year's rent. Rep. 129. 138.

Constables are to keep watch and ward from the 10th of September to the 10th of March, from nine in the evening till seven the next morning; and from the 10th of March to the 10th of September.
September, from ten in the evening, till five next morning. They shall use their best endeavours for preventing fires, robberies, and disorders, and arrest malefactors; and go twice or oftener about their wards in every night; and the watchmen are to apprehend all suspected persons, &c. and deliver them to the constable of the night, who shall carry them before a justice of the peace: Constables misbehaving themselves, to forfeit 20s. and the lord mayor, or two justices for the city, may hear and determine offences, and levy penalties by distress and sale of goods, &c. They must place the king’s arms, and the arms of the city, over their doors; and if they reside in alleys, at the ends of such alleys towards the streets, to signify that a constable lives there.

CONSTAT, is the name of a certificate, which the clerk of the pipe and the auditors of the exchequer, make at the request of any person who intends to plead or move in that court, for the discharge of any thing.

CONSUETUDINIBUS ET SERVICIS, a writ of right close, which lies against the tenant that deforses his lord of the rent or service due to him.

CONSULTATION, a writ, whereby a cause being formerly removed by prohibition from the ecclesiastical court, to the king’s court at Westminster is returned thither again.

CONTEMPT, is a disobedience to the rules and order of the court, which hath power to punish such offence; and a person may be fined or imprisoned for a contempt done in a court. Cro. Eliz. 689.

CONTENEMENT, signifies that which is necessary for the support and maintenance of men, according to their several qualities, conditions, or state of life.

CONTINGENT LEGACY, is a legacy which may, or may not happen. If a legacy be left to one when he shall attain, or if he shall attain the age of twenty-one years this is a contingent legacy, and if the legatee die before that time, the legacy shall not vest. But a legacy to one to be paid when he attains the age of twenty-one years, is a vested legacy; an interest which commences in presenti, although it be solvendum in futuro: and if the legatee die before that age, his representatives shall receive it out of the testator’s personal estate, at the same time,
time, that it would have become payable in case the legatee had lived.

CONTINGENT REMAINDER, is where no present interest passes, but the estate is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event, so that the particular estate, may chance to be determined, and the remainder never take effect.

CONTINGENT USE, a use limited in a conveyance of land, which may or may not happen to vest, according to the contingency expressed in the limitation of such use.

CONTINUAL CLAIM, a claim made from time to time within every year and day to land or other thing, to save the right of entry to an heir.

CONTINUANCE, of a writ or action, is from one term to another, in case where the sheriff hath not returned or executed a former writ, issued in the same action.

CONTINUANDO, is a word used in a special declaration of trespass, when the plaintiff would recover damages for several trespasses in the same action.

CONTRABAND GOODS, are goods which are prohibited by act of parliament, or the king's proclamation, to be imported or exported. See Smuggling.

CONTRACT, a covenant or agreement between two or more persons, with a lawful consideration or cause. Contracts are two-fold; either express or implied. Express contracts, are, where the terms of the agreement are openly uttered, as to pay a stated price for certain goods. Implied, are such as reason and justice dictate, and which therefore, the law presumes that every man undertakes to perform: thus if a man take up wares from a tradesman, without any agreement of price, the law concludes, that he contracted to pay their real value. 2 Black. 443.

CONTRA FORMAM COLLATIONIS, a writ, that lies where a man had given lands to the warden and master of an hospital, to support certain poor men; if they alienated the land, then the donor or his heirs should bring this writ, to recover them.

CONTRA FORMAM STATUTI, the usual conclusion of every indictment for an offence created by statute.

CONTRAMANDATIO PLACITI, countermanding what was formerly ordered, and giving the defendant further time to answer.

CONTRA-
CONTRAMANDATUM, a lawful excuse, which the defendant in a suit by attorney alleges for himself, to shew that the plaintiff hath no cause of complaint.

CONTRIBUTION, is where every one pays his share, or contributes his part to any thing. One parcerer shall have contribution against another; one heir have contribution against another heir in equal degree; and one purchaser have contribution against another.

CONTRIBUTIONE FACIENDA, is a writ that lies where there are tenants in common who are bound to do one thing, and yet one is put to the burden.

CONTROLLER, an overseer, or officer, relating to public accounts; such as the controller of the king's navy, controller of the customs, &c.

CONTROVER, he that devises or invents false or feigned news.

CONVENABLE, agreeable, suitable, convenient. 27 Edw. III. c. 21, and 2. H. VI. c. 2.

CONVENTICLE, a term applied to the illegal meetings of the nonconformists; by the 22 Car. II. c. 1, any one being present at a conventicle, was liable to the penalty of 5s. for the first offence, and 10s. for the second; and persons preaching incurred a penalty of 20l. Also suffering a meeting to be held in a house was liable to a like penalty of 20l. and justices of the peace, had power to enter such houses and seize the persons assembled, or neglecting so to do incurred the penalty of 100l. But by 1 W. and M. c. 18, all protestant dissenters are exempted from penalties, though if they meet in a house, with the doors locked, barred, or bolted, they shall receive no benefit from the act.

CONVENTIONE, is a writ that lies for any covenant in writing, not performed.

CONVENTION PARLIAMENT, on the abdication of king James II. in 1689. The assembly of the states of the kingdom, to take care of their rights and liberties, and who settled king William and queen Mary on the throne, was called the Convention.

CONVERSOS, the Jews in England, because they were converted to the christian religion, were formerly called conversos.

CONVEYANCE, a deed which passes land from one to another.
ther. The most common conveyances now in use are, deeds of gift, bargain and sale, lease and release, fines and recoveries, settlements to uses, &c. A conveyance, cannot be fraudulent in part, and good as to the rest; for if it be fraudulent and void in part, it is void in all, and it cannot be divided. Fraudulent conveyances to deceive creditors, defraud purchasers, &c. are void, by stat. 50 Ed. III. c. 6. 13 Eliz. c. 5—27. Eliz. c. 4.

CONVICTION is either where a man is outlawed, or appeareth and confesseth, or else is found guilty by the inquest. Cramp. Inst. 9.

Summary proceedings are directed by several acts of parliament, for the conviction of offenders, and the inflicting certain penalties imposed by those acts. In those there is no intervention of a jury, but the party accused, is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge.

The law implies that there must be a conviction before judgment, though not so mentioned in a statute; and where any statute, makes a second offence felony, or subject to an heavier penalty than the first, it is always implied, that such second offence ought to be committed after a conviction for the first. 1 How. 15 —107. Judgment amounts to a conviction, though it does not follow that every one who is convict, is adjudged. 1 Horn. 14.

A conviction ought to be in the present tense, and not in the time past. Ld. Raym. 1376. Str. 608. A conviction, ought to be on an information or claim precedent Ld. Raym. 510.

When an act of parliament, orders the conviction of offenders before justices of the peace &c. it must be intended after summons to bring them in, that they may have an opportunity of making their defence; and if it be otherwise, the conviction shall be quashed.

CONVICT RECUSANT, one who has been legally presented, indicted, and convict, for refusing to come to church to hear the common prayer, according to the several statutes of 1 Eliz. 2. 23 Eliz. 1, and 3 Jac. 1.

CONVIvHUM, is when the tenant, by reason of his tenure, is bound to provide meat and drink for his lord, once or oftener in the year.

CONVOCATION,
CONVOCATION, is the assembly of all the clergy to consult of ecclesiastical matters, in time of parliament. There are two houses of convocation, the one called the higher convocation house, where all the archbishops and bishops sit severally by themselves; the other the lower convocation house, where all the rest of the clergy sit; that is, all the deans and archdeacons, one proctor for every chapter, and two proctors for all the clergy of each diocese; in all one hundred and sixty-six persons.

The archbishop of Canterbury is the president of the convocation, and prorogues and dissolves it by mandate from the king. The convocation is not only to be assembled by the king's writ but the canons made by them are to have the royal assent. They are to have the examining and censuring of heretical and schismatical books, and persons, &c. but appeal lies to the king in chancery, or to his delegates, 4 Inst. 322. 2 Rol. Abr. 225. The clergy called to the convocation, and their servants, &c. have the same privileges as members of parliament. Stat. 8, H. VI. c. 1.

CONNUSANCE OF PLEAS, is when one living within a jurisdiction, may implead another within it, or for a cause arising there.

COOPERs. By 23. H. VIII. c. 4. cooperers shall make their vessels of seasonable woods, and make them with their own marks, on forfeiture of 3s. 4d. and the contents of vessels are appointed to be observed, under like penalty.

COPARCENARY, an estate held in coparcenary, is, where lands of inheritance descend from the ancestor to two or more persons. It arises either by common law, or particular custom. By common law, as where a person seized in fee-simple or fee-tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they shall all inherit. And these co-heirs are then called coparceners; or for brevity sake parceners. Parceners by particular custom, are, where lands descend, as in gavel-kind, to all the males in equal degree, as sons, brothers, uncles, or other kindred; and in either of these cases, all the parceners put together make but one heir, and have but one estate among them. 2 Black 187.

COPARCENERS, in the common law, are such as have equal portions in the inheritance of their ancestor—see coparcenary.

COPARTNERSHIP is when two or more persons unite togeth,
ther, and agree to participate in profit and loss, according to their respective shares in a capital or joint stock; but this is absolutely necessary to constitute a copartnership. 1 H. B. 43, 48.

COPY, in a legal sense, is the transcript of an original writing; as the copy of a patent, of a charter, deed, &c. but a clause out of either, cannot be given in evidence to prove the original, as it must be absolutely a true office copy of the whole.

COPYHOLD, a tenure for which the tenant hath nothing to show but the copy of the rolls made by the steward, as he inrolls and makes remembrances of all other things done in the lord's court; thus a tenant by copy of court roll, is he who is admitted a tenant of any lands or tenements within a manor, that, time out of mind, by use and custom of the manor, have been demisable, and demised to such as will take the same in fee, or fee tail, for life, years, or at will, according to the custom of the manor, by copy of court-roll of the said manor.

The customs of manors, differ as much as the humour and temper of the respective ancient lords, so a copyholder, by custom, may be tenant in fee-simple, in fee-tail, for life, by the courtesy, in dower, for years, at sufferance, or on condition; subject however, to be deprived of these estates upon the concurrence of those circumstances, which the will of the lords promulged by immemorial custom, hath declared to be a forfeiture or absolute determination of those interests; as in some manors the want of issue, in others the want of issue male, in others, the cutting down timber, in others the nonpayment of rent or fine. Yet none of these interests amount to freehold; for the freehold of the whole manor abides always with the lord only, who hath granted out the use of occupation, but not the corporeal seizin, or true possession of certain parts or parcels thereof, to these his customary tenants at will. 2 Black 148.

Where, by special custom, a descent of copyholds may be contrary to the common law, such custom shall be interpreted strictly; but otherwise, the lands must descend according to the rules of the common law. Darnf. and East, 466.

Copyholds are not transferable by matter of record, even in the king's courts; but only in the court baron of the lord, by surrender and admittance. 2 Black, 366.
If one would exchange a copyhold with another, both must surrender to each others use, and the lord admit accordingly. Co. Copyhold s. 36, 39.

If a man will devise his copyhold estate, he cannot do it by his will, but he must surrender to the use of his will, and in it declare his intent. Id. But when the legal estate is in trustees, a man cannot in that case, surrender the copyhold lands to the use of his will; but they will pass by his will only. 2 Atk. 38. 1 Vez. 489.

So a mortgager may dispose of the equity of redemption by will, without surrender; for he hath at that time no estate in the land whereof to make a surrender.

A devise of a copyhold to the heir is void; for where two titles meet the worthier is to be preferred. Str. 489.

A copyhold may be intailed by special custom, and the intail cut off by recovery or surrender in the lord's court. But a recovery in the lord's court, without custom to warrant it, will not be a bar to the intail; but a surrender in that case will bar it. 2 Vez. 603. But where there are two customs to bar estates tail, one by recovery, and the other by surrender, either of them may be pursued. Str. 1197.

Recovery in the lord's court, differs in nothing that is material, from recoveries of freehold land in the king's court; but the method of surrender is easier and cheaper. 2 Black, 365.

A copyhold is not barred by fine, and five years nonclaim. Noy.

Surrender, is yielding up the estate by the tenant into the hands of the lord, for such purposes, as in the surrender are expressed.

A steward of a manor, may take a surrender out of the manor, but cannot admit out of the manor. 4 Co. 26. A femme covert, is to be secretly examined by the steward, in her surrendering her estate. 1 Inst. 59.

Until admittance of the surrenderee, the surrenderor continues tenant, and shall receive the profits, and discharge all services due to the lord; but he cannot revoke his surrender, except in the case of a surrender to the use of his will, which is always revocable. And if the lord will not admit the surrenderee, he may be compelled to it by a bill in chancery or mandamus. 2 Black, 368.

And
And this method of conveyance, by surrender and admittance, is so essential to the nature of a copyhold estate, that it cannot possibly be transferred by any other assurance. No feoffment, fine, or recovery, in the king’s courts, has any operation upon it. *Ibid.* Upon admittance, the tenant pays a fine to the lord, according to the custom of the manor, and takes the oath of fealty. *Id.* If a copyholder, do not pay the services due to the lord, or refuse to attend at the lord’s court, or to be of homage, or to pay his fine for admittance, or to do suit at the lord’s mill, or the like, it is in law a forfeiture. *Rol. Abr. 509.*

If there be a tenant for life, remainder in fee, and tenant for life commit a forfeiture, by which his estate for life be forfeited; the lord enters for the forfeiture; yet this shall not bind him in the remainder, but only the tenant for life. *Ibid.*

If a copyholder commit a felony or treason, he forfeits his copyhold to the lord, without any particular custom; only the king shall first have thereof the year, day, and waste. *Gibb. Ter. 226.*

If a copyhold escheat, the lord may grant it out again with what improved fine he will. *Hil. 6.*

COPY-RIGHT, the exclusive right of printing and publishing copies of any literary performance, for a limited time. See Books and Literary Property.

CORRAGE, is an imposition extraordinary, growing upon some unusual occasion, and generally, certain measures of corn. *Bract.*

CORAM NON JUDICE, when a cause is brought into a court, whereof the judges have not any jurisdiction, it is said to be *coram non judice.*

CORD OF WOOD, ought to be eight feet long, four feet broad, and four feet high, by statute.

CORDAGE, for penalties and punishments incurred, by fraudulently manufacturing cordage. See 25 G. III. c. 56. See Cables.

CORN. It is against the common law of England to buy or sell corn in the sheaf, before it is threshed and measured; the reason whereof seems to be, because by such sale, the market is in effect forestalled. *3 Inst. 197.*

Every person who shall sell or buy corn without measuring, or otherwise than the Winchester measure, sealed and stricken by the
the brim, shall on conviction before one justice on the oath of one witness, forfeit 40s. besides the whole of the corn so sold or bought, or the value thereof, half to the poor, and half to the informer.

On complaint to a justice, that corn has been bought, sold, or delivered, contrary to the act, the proof shall lie upon the defendant, to make it appear by oath of one witness, that he sold or bought the same lawfully: and if he shall fail therein, he shall forfeit, as before mentioned, to be levied by distress and sale. 22 and 23. C. II. c. 8 and 12, and K. v. Arnold. T. 33, G. III.

And if any mayor, or other head officer, shall knowingly permit the same, he shall upon conviction at the county sessions, forfeit 50l. half to the prosecutor and half to the poor, by distress and sale. For want of distress, to be imprisoned by warrant of the justices, till payment be made. 22 C. II. c. 8. s. 3.

The last acts now in force to regulate the returns of the prices of grain, are statutes 31 G. III. c. 50: 33 G. III. c. 65. By the former the statutes 1. Jac. II. c. 19: 1 W. and M. c. 12: 5 G. II. c. 12: 10 G. III. c. 39: 13 G. III. c. 43: 21 G. III. c. 50 and 29. G. III. c. 58, are all repealed; as also every provision in any other act for regulating the importation of wheat, &c. except such as relate to the making of malt for exportation, and the exportation thereof. So much of the 15 Car. II. as prohibits the buying of corn to sell again, and the laying it up in granaries is also repealed.

By the statutes of 31 G. III. c. 30, and 33 G. III. c. 65, bounties are granted on exportation at certain prices, and the exportation prohibited when at higher prices: the quantity of corn to be exported to foreign countries is settled; the maritime counties of England are divided into districts. The exportation of corn to be regulated in London, Kent, Essex, and Sussex, by the prices at the corn exchange; the proprietors of which are to appoint an inspector of corn returns, to whom weekly returns are to be made by the factors: and he is to make weekly accounts, and transmit the average price to the receiver of the returns, to be transmitted to the officers of the customs, and inserted in the London Gazette. The exportation in other districts and in Scotland, to be regulated by the prices at different appointed places, for which mayors, justices, &c. are to elect inspectors. Declarations are to be truly made
made by factors of the corn sold by them. Orders of council may be made to regulate importation, or exportation, from time to time: such orders to be laid before parliament respecting the exportation of wheat, and trans-shipping of corn brought coastwise. See 32 G. III. c. 50, and 33 G. III. c. 3.

CORNAGE, a kind of grand serjeantry, the service of which tenure was to blow a horn, when any invasion of the northern enemy was perceived. By this many persons held their land northward about the wall, commonly called the Picts wall. Littl. 65.

CORNWALL, a royal duchy belonging to the prince of Wales, abounding with mines, and having stanary courts, &c. It yields a great revenue to the prince. Several statutes have been issued respecting leases and grants in this duchy, and particularly the stat. of 39 G. II. c. 10.

CORODY, a sum of money, or allowance of meat, drink, or clothing, due to the king from an abbey or other house of religion, whereof he is the founder, towards the reasonable sustenance of such a one of his servants, being put to his pension, as he thinks good to bestow it on. Corodies, belonged sometimes to bishops and noblemen from monasteries. But these corodies are now totally fallen into disuse. 1 Black, 283.

CORONARE FILIOS, the old villains, or those who held in villenage, were forbid coronare filios, to make their sons priests, that is, to let them be ordained; because ordination changed their condition, and gave them liberty to the prejudice of the lord, who could before claim them as his natives, or born servants.

CORONATORE ELICENDO, a writ, which, after the death or discharge of any coroner, is directed to the sheriff out of the chancery, for the choice of a new coroner, and to certify into the chancery, both the election, and name of the party elected, and to give him his oath.

CORONER, a very ancient officer at the common law, he is called coroner, because he deals principally with the pleas of the crown; and coroners were of old time the conservators of the peace. This officer, ought to be a sufficient person, that is, the most wise and discreet knight, that best would and might attend upon such an officer. St. Westm. c. 10. By the 14 Ed. III. st. 1, c. 8. No coroner shall be chosen, unless he shall have land in fee
fee sufficient, in the same county wherein he may answer to all manner of people. The lord chief justice of the king’s bench is the sovereign coroner of the whole realm.

How elected. In ancient times, none under the degree of knight were chosen. 2 Inst. 32. 176. But as the chief intent was to prevent the choosing of persons of mean ability, it seems the design of it is sufficiently answered, by choosing men of substance and credit; and as the constant usage for several ages past has been accordingly, it seems to be no objection at this day, that the person chosen is not a knight. 2 Hau. 42. 43.

By the 28 Ed. III. c. 6. it is enacted, that all coroners of the counties, shall be chosen in full counties, by the commoners of the said counties, of the most meet and lawful people that shall be found in the same, to execute the said office. But though they are chosen by the county, it must be pursuant to the king’s writ, issuing out of and returnable into chancery; and none but freeholders have a voice at such election, for they only are suitors to the county court. 2 Inst. 99. 2. Hau. 43. 44. When chosen they shall be sworn by the sheriff, for the due execution of their office. 2 Hale. H. 55.

His duty in taking inquisitions. When any person comes to an untimely death, the township shall give notice thereof to the coroner: otherwise if the body be interred before he come, the township shall be amerced. Hale’s Pl. 170. And if the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. 2 Hau. 48.

When the coroner has received notice, he shall issue a precept to the constables of the four, five, or six next townships, to return a competent number of good and lawful men of their townships, to appear before him in such a place, to make an inquisition touching that matter. 4 Ed. 1. st. 2. Or he may send a precept, to the constable of the hundred. Wood b. 4. c. 1. And there must be twelve jurors at the least. 2 Inst. 148. If the constables make no return, or if the jurors returned, shall not appear, their defaults are to be returned to the coroner, and they shall be amerced before the judges of the assize. 2 H. H. 55.

The jury after being sworn, is to be charged by the coroner to inquire, upon the view of the body, how the party came by his death. 2 H. H. 60.
Every coroner upon an inquisition before him found, whereby any person shall be indicted for murder or manslaughter, or as an accessory before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses to the next general goal delivery to give evidence; and shall certify the evidence, the recognizance, and the inquisition or indictment before him taken and found, at or before the trial, on pain of being fined by the court. 1 & 2 P. & M. c. 13. s. 5.

But the coroner cannot enquire of accessories after the fact. He ought to enquire into the death of all persons dying in prison, that it may be known, whether they died by violence or any unreasonable hardships.

His general power and duty. Besides his judicial place, the coroner has an authority ministerial, as a sheriff, namely, when there is a just exception taken to the sheriff, judicial process shall be awarded to the coroner for the execution of the king's writ: and in some special cases, the king's original writ, shall be immediately directed to him. 4 Inst. 271. He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after quinto exactus, at the fifth court, if the defendant do not appear. Wood. b. 4. c. 1.

It is his duty to enquire of treasure that is found, who were the finders, and likewise who is suspected thereof. He may also receive the appeal of an approver, for an offence in the same, or in a different county, and if the appellee be in the same county, he may award process against him to the sheriff till it come to the exigent; but if the appellee, be in a foreign county, the coroner cannot award process against him, but must leave it to the justices of a goal delivery, before whom the appeal is afterwards recorded 2 Haw. 52.

Punishment for misdemeanour. Justices of assize and peace, have power to enquire of and punish the defaults and extortions of coroners. 1 Hen. VIII. c. 7. and 25 Geo. II. c. 29. s. 6.

His fees. The coroner shall have for his fee, upon every inquisition taken upon the view of the body slain, 13s. 4d. of the goods and chattels of him that is the slayer and murderer, if he have any goods; and if he have no goods, of such amerciament, as should fortune any township to be amerced for the escape of the murderer. 3 Hen. VII. But as the said fee of 13s. 4d. is not an adequate
adequate reward for the general execution of the said office, therefore for every inquisition, not taken upon view of a body dying in goal, the coroner shall have 20s. and also 9d. for every mile he shall be compelled to travel from his usual place of abode to take such inquisition; to be paid by order of the justices in sessions, out of the county rates. 25 Geo. II. c. 29. s. 1.

CORPORATION, a body politic or incorporated, consisting of a number of persons empowered by the law of the land to act under one name, and as one person. Corporations are established by act of parliament, and their functions or powers are limited by the act of their creation or charter. See Charter.

The magistrates of a town or city act in a corporate capacity, for the advantage and administration of affairs within their liberties.

CORPOREAL INHERITANCE. See Inheritance.

CORPSE, if any person steal the shroud or other apparel from a dead body, it will be a felony. 3 Inst. 110. 12 Rep. 113. But stealing the corpse itself, only, is not felony, but it is punishable as a misdemeanor, by indictment at common law. 2 Black. 236.

CORPUS CUM CAUSA, a writ issuing out of chancery, to remove both the body and the record, touching the cause of any man lying in execution upon a judgment for debt in the king's-bench, &c. there to lie, until he have satisfied the judgment.

CORRECTOR OF THE STAPLE, a clerk belonging to the staple, who writes and records the bargains of merchants there made.

CORRUPTION OF BLOOD, an infection growing to the state of a man attainted of felony or treason. Restitution of blood, in its true nature and extent, can only be by act of parliament. 4 Black. 388. See Attainder.

CORSNED BREAD, was a kind of superstitious trial, used by our Saxon ancestors, by a piece of barley bread, first execrated by the priest, and then offered to the suspected guilty person, to be swallowed by way of purgation; for they believed a person, if guilty, could not possibly swallow a morsel so accursed; or if he did, it would choke him.

CORSEPRESSENT, at any man's death, the body of the best, or second-best beast, was according to the custom, offered, or presented
presented to the priest, and carried with the corpse, as a corse-present.

COSENING, an offence whereby any thing is done deceitfully, whether belonging to contracts or not, which cannot be properly termed by any special name.

COSHERING, a senioral prerogative, whereby the lord and his followers, lay and feasted themselves at his tenant's house.

COSINAGE, a writ that lies where the tressayle or great-grandfather is seized in his demesne, as of fee at the day of his death, of certain lands or tenements, and dies, and then a stranger enters, and abates; for then shall his heir have this writ of cosinage.

COSTS. By the statute of Gloucester, 6 Ed. I. c. 1. it is provided that the demandant may recover against the tenant, the costs of his writ, together with his damage; and that this act shall hold place in all cases, when the party is to recover damages. 1 New. Abr. 511.

Costs of the writ, extends to all legal costs of suit, but not expenses of travel, loss of time, &c. 2 Inst. 288.

When double damages are given by act of parliament, the costs shall be doubled also; for damages include costs. Str. 1048.

Persons suing in forma pauperis, shall not pay costs. 3 Black. 400.

If it be an action, wherein there can be no such certifying, as debt, assumpsit, trover, trespass for taking goods, trespass for spoiling goods, trespass for beating a servant, whereby he lost his service, it is out of the statute, and the plaintiff may have full costs. Salk. 408.

Where costs are allowed, it is not necessary for the jury to give them, but they may leave it to the court to do it, who are the best able to judge of what costs are fitting to be given. It is the course of the court of king's-bench, to refer the taxation of costs to the proper officer of the court, and not to make any special rules for such matters, except it be in extraordinary cases. 1 Litl. Abr. 338.

The matter of costs in equity, is not held to a point of right, but merely discretionary, according to the circumstances of the case.
case, as they appear more or less favourable to the party vanquished. 3 Black. 451.

If costs be refused to be paid, an attachment lies. 1 Nels. Abr. 550.

The king and any person suing to his use, shall neither pay nor receive costs. Stat. 24 H. VIII. c. 8.

The 18 Geo. III. c. 19. authorises any justice, who shall have heard and determined the matter of a complaint made before him, to award such costs to be paid by either party, and in such manner, as to him shall seem meet, to the party injured: and if the person so ordered by the justice, shall not forthwith pay, or give satisfaction to the justice, the same shall be levied by distress: and if goods and chattels of such person cannot be found, the justice shall commit him to the house of correction for the place where such person shall reside: to be kept to hard labour for any time not exceeding one month, nor less than ten days, or till such sum, with the expenses attending the commitment be first paid.

Provided, that upon the conviction of any person upon a penal statute, where the penalty shall be at or exceed the sum of 5l, the said costs shall be deducted by the justice, at his discretion out of the penalty, so that such deduction shall not exceed one-fifth part of the penalty; and the remainder of the penalty, shall be divided among the persons who would have been entitled to the whole thereof, if this act had not been made.

Costs double or treble are allowed to defendants sued for acting under almost every statute relating to officers of justice, customs, or other duties, highways, paving, &c.

For more matter concerning Costs see Bac. Abr. & 6 Vin. Abr.
tit. costs.

COTERELLI, a sort of wandering thieves and plunderers, who seem at first to have been cottagers and country-fellows.

COTERELLUS, a mean, servile tenant, who seemed to have lived in mere villegage, and had his person and issue, and goods, disposed at the pleasure of the lord.

COTTAGE. By 31 Eliz. c. 7, it was enacted that no person should build or erect any manner of cottage, without laying at least four acres of land to the same, but that act was repealed by 15 Geo.
15 Geo. III. c. 32. on its having been suggested, that it had laid the industrious poor under great difficulties to procure habitations; that it tended much to lessen population, and in many other respects, was inconvenient to the labouring part of the people.

COVENABLE, fit, convenient, or suitable.

COVENANT, the agreement or consent of two or more by deed in writing, sealed and delivered; whereby either, or one of the parties, promises to the other, that something is done already, or shall be done afterwards: he that makes the covenant, is called the covenanter, and he to whom it is made the covenantee. Shep. Touch. 160.

A covenant is generally either in fact, or in law. In fact, is that which is expressly agreed between the parties, and inserted in the deed. In law, is that covenant which the law intends and implies, though it be not expressed in words, as if a lessor demise and grant to his lessee, an house or lands for a certain term, the law will intend a covenant on the lessor's part, and the lessee shall, during the term, quietly enjoy the same against all incumbrances. 1 Inst. 384.

COVENANT TO STAND SEISED TO USES, is when a man that hath a wife, children, brother, sister, or kindred, doth by covenant in writing under hand and seal agree, that for their, or any of their provision or preferment, he or his heirs, will stand seised of land to their use, either in fee-simple, fee-tail, or for life.

COVERTURE, in law is applied to the condition of a married woman, who by the laws of this realm is sub potestate viri, and therefore disabled to make bargain with any, to the prejudice of herself or her husband, without his assent and privity, or at least without his allowance and confirmation.

COVIN, is a deceitful assent or agreement between two or more, to the prejudice of another. As if a tenant for term of life, or tenant in tail, will secretly conspire with another, that the other will recover against the tenant for life, the lands which he holds, &c. in prejudice of him in the reversion.

COUNCIL. Rioters shall answer before the council, on certificate of the justices. 13 Hen. IV. c. 7. sect. 21. Conspiracies against privy counsellors, see 3 Hen. VII. c. 14.
COUNCIL, in the city of London, there are common councilmen chosen in every ward, at a court of wardmote held by the aldermen of the respective wards, on St. Thomas’s day yearly; they are to be chosen out of the most sufficient men; and sworn to give true counsel for the common profit of the city. In the court of common council, are made laws for the advancement of trade, and committees yearly appointed, &c. but acts made by them, are to have the assent of the lord mayor and aldermen by stat, 21 Geo. I.

COUNSEL, for prisoners. 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, for as to matters of law, arising on the trial, they are entitled to the assistance of a counsel. 4 Black. 335.

COUNSELLOR, one retained by a client, to plead his cause in a court of judicature. A counsellor in law retained, has a privilege to enforce any thing, which he is informed of by his client, and to give it in evidence, it being pertinent to the matter in question, and not to examine whether it be true or false; but it is at the peril of him who informs him; for a counsellor is at his peril to give in evidence, that which his client informs him, being pertinent to the matter in question, otherwise action upon the case lies against him by his client. Cro. Jac. 90.

The fees to counsellors are not in the nature of wages or pay, or that which we call salary or hire, which are duties certain, and grow due by contract for labour or service; but what is given them, is honorium, not merces; being a gift, which gives honour as well to the taker as the giver; nor is it certain or contracted; for no price or rate can be set upon counsel which is invaluable and inestimable, so as it is more or less according to the circumstances, namely, the ability of the client, the worthiness of the counsellor, the weightiness of the cause, and the custom of the country. It is a gift of such a nature, that the able client may not neglect to give it, without ingratitude, for it is but a gratuity or token of thankfulness: yet the worthy counsellor may not demand it without doing wrong to his reputation. Pref. to Dav. Rep. 22. 23.

COUNT, signifies as much as the original declaration in a pro-
cess, though more used in real than personal actions, as a declaration is more applied to personal, than real.

COUNTEE, was the most eminent dignity of a subject before the conquest; and those who in ancient time were created countees, were men of great estate and dignity. The countee, was prefector or prepositus comitatus, and had the charge and custody of the county, whose authority the sheriff now hath. 9 Rep. 46 n.

COUNTENANCE, was anciently used for credit or estimation. 1 Ed. III. st. 2. c. 4.

COUNTER, lately used for the name of two city prisons—the Poultry and Giltspur-street counters.

COUNTERFEITS, persons obtaining any money, goods, &c by counterfeit letters or false tokens, being convicted before justices of assize, or justices of peace, are to suffer such punishments as shall be thought fit, short of death; as imprisonment, pillory, &c. Stat. 33 Hen. VIII. c. 1. The obtaining money from one man, to another's use, upon a false pretence of having a message and verbal order to that purpose, is not punishable by criminal prosecution; it depending on a bare naked lie, against which common prudence and caution may be a security. 6 Mod. 105. 1 Haw. 188.

COUNTERMAND, is where a thing formerly executed, is afterwards by some act or ceremony made void, by the party that had first done it.

COUNTERPART, when the several parts of an indenture, are interchangeably executed by the several parties, that part or copy which is executed by the grantor, is usually called the original, and the rest are counterparts.

But a better practice is lately adopted for all the parties to execute every part; which renders them all originals. 2 Black. 296. If an original deed is in being, or may be had, the counterpart cannot be produced as evidence; otherwise, where the original cannot by any means be procured. Wood. b. 4. c. 4.

COUNTERPLEA, is in law a replication to aid prior, as is also a counterplea to the plea of clergy.

COUNTER-ROLLS, the rolls which sheriffs of counties, have with coroners of their proceedings, as well of appeals as of inquest, &c. 3 Ed. I. c. 10.
COUNTIES PALATINE, are those of Chester, Durham, and Lancaster. Of these three, the county of Durham is now the only one, remaining in the hands of a subject; for the earldom of Chester was united to the crown by king Henry III. and hath even since given title to the king’s eldest son. And the county Palatine or duchy of Lancaster, in the reign of king Edward IV. was by act of parliament, vested in the king, and his heirs kings of England, for ever. 1 Black, 118.

There is a court of chancery, in the counties Palatine of Lancaster and Durham, over which there are chancellors; that of Lancaster called the chancellor of the duchy. And there is a court of exchequer at Chester, of a mixed nature for law and equity, of which the chamberlain of Chester is judge. There is also a chief justice of Chester; and other justices in the other counties palatine, to determine civil actions and pleas of the crown. In all of these the king’s ordinary writs are of no force. And the judges of assise, who sit within these franchises, sit by virtue of a special commission from the owners thereof, and under the seal thereof, and not by the usual commission under the great seal of England. 3 Black, 79.

COUNTY signifies the same as shire, and contains a circuit or portion of the realm, into which the whole land is divided, for the better government of it, and the more easy administration of justice; so that there is no part of this nation which is not within some county; and every county is governed by a yearly officer, whom we call a sheriff. See Sheriff. Fortescue, c. 24.

COUNTY COURT, this was anciently a court of great dignity and splendor; the bishop and the earl, with the principal gentlemen of the shire, sitting therein to administer justice, both in lay and ecclesiastical causes. But its dignity was much impaired, when the bishop was prohibited, and the earl neglected to attend it. And in modern times, as the proceedings are removable from hence into the king’s superior courts, by writ of ponens, or recordare, this hath occasioned the business of the county court, in a great measure to decline.

By the 2 and 3 Edw. VI, c. 25, no county court shall be longer deferred than one month from court to court; so that the county court, shall be kept every month, and not otherwise. And only twenty-eight days shall be reckoned to the month. 2 Inst. 71.
And it may be kept at any place within the county, unless restrained by statute. Wood c. 4. c. 1.

The suitors, that is, the freeholders, are the judges of this court; except that in re-disseisin, by the statute of Merton, the sheriff is judge.

The jury in this court ought to be freeholders, but the quantum of their estate is not material.

This court shall hold pleas between party and party, where the debt, or damage is under 40s. 4 Inst. 266.

But in replevin the sum may exceed 40s. Id.

It has not cognizance of trespass vi et armis, because a fine is thereby due to the king, which it cannot impose. Id.

But by virtue of a writ of justicies the court may hold plea of trespass vi et armis, and of any sum, or of all actions personal above 40s. Id.

Causes may be removed from this court by a writ of recordare, issuing out of the chancery, directed to the sheriff, commanding him to send the plaint that is before him in his county court (without writ of justicies) into the court of king's bench or common pleas, to the end that the cause may be there determined: whereupon, the sheriff is to summon the other party to be in that court (into which the plaint is to be sent) at a day certain; and he is to make certificate of all this under his own seal, and the seal of four suitors of the same court. Read. County. C.

Causes, may also be removed by pone, which differs in nothing from a recordare, except that it removes such suits as are before the sheriff by writ of justicies, and a recordare is to remove the suit that is by plaint only, without a writ. Id. And though the plea be discontinued in the county, yet the plaintiff or defendant may remove the plaint into the common pleas or king's bench, and it shall be good, and he shall declare upon the same. Id.

COUNTY RATE, by the 12 G. II. c. 29, the justices at their general or quarter sessions, or the greater part of them (and by 13 G. II. c. 18, justices of liberties and franchises not subject to the county commissioners) shall have power to make one general county rate, to answer all former distinct rates, which shall be assessed on every parish, &c. and collected and paid by the high constables of hundreds to treasurers appointed by the justices; which money shall be deemed the public stock, &c. But appeal...
lies by the churchwardens and overseers, against the rate of any particular parish. 22 G. III. c. 17.

For the repairing of bridges, and highways thereto adjoining, and salaries for the surveyors of bridges. For building and repairing county goals. For repairing shire halls. For the salary of the master of the house of correction, and relieving the weak and sick in his custody. For the relief of the prisoners in the king’s bench and marshalsea prisons; and of poor hospitals in the county, and of those who shall sustain losses by fire, water, the sea, or other casualties, and other charitable purposes for the relief of the poor, as the justices in sessions shall think fit. For the relief of the prisoners in the county goal. For the preservation of the health of the prisoners. For the salary of the chaplain of the county goal. For setting prisoners to work. For the treasurer’s salary. For salary of persons making returns for the prices of corn. For charges attending the removal of any of the said general county rates by certiorari. For money for purchasing lands at the ends of county bridges. For charges of rebuilding or repairing houses of correction, and for fitting up and furnishing the same, and employing the persons sent thither. For charges of apprehending, conveying, and maintaining rogues and vagabonds. For charges of soldiers carriages, over and above the officers pay for the same, by the several yearly acts against mutiny and desertion, and by the militia act. For the coroner’s fees of 9d. a mile for travelling to take an inquisition, and 20s. for taking it. For charges of carrying persons to the goal, or house of correction. For the goaler’s fees for persons acquitted of felony, or discharged by proclamation. For charges of prosecuting and convicting felons. For charges of prosecuting and convicting persons plundering shipwrecked goods. For charges of maintaining the militia-men’s families, by the several militia acts. For charges of bringing insolvent debtors to the assises, in order to their discharge, if themselves are not able to pay. For the charges of transporting felons, or conveying them to the places of labour and confinement. For charges of carrying parish apprentices, bound to the sea service, to the port to which the master belongeth.

By the 12 G. II. c. 29, the churchwardens and overseers shall, in thirty days after demand made, out of the money collected for relief of the poor, pay the sums so assessed on each parish or place.
place. And if they shall neglect or refuse so to pay, the high constable shall levy the same by distress and sale of their goods, by warrant of two or more justices residing in or near such parish or place. Where there is no poor-rate, the justices, in their general or quarter sessions, shall by their order direct the sum assessed on such parish, township, or place, to be rated and levied by the petty constable, or other peace officer, as money for the relief of the poor is by law to be rated or levied. The high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid, shall be deemed the public stock. And the said high constables shall deliver in a true account on oath (if required) of the money by them received, before the said justices at their general or quarter sessions. The treasurer shall pay so much of the money in his hands, to such persons as the justices in sessions shall from time to time appoint, for any uses and purposes, to which the public stock of any county, city, division, or liberty, is or shall be applicable. And shall deliver in a true account on oath (if required), of his receipts and disbursements, to the justices at every general or quarter sessions, and also the proper vouchers for the same, to be kept amongst the records of the sessions. And the discharge of the said justices, by their order at their general or quarter sessions, shall be a sufficient discharge to the treasurer. And no new rate shall be made, until it appear by the treasurer's accounts or otherwise, that three fourths of the money collected, have been expended for the purposes aforesaid. If the churchwardens and overseers of any parish or place, shall think such parish or place is overrated, they may appeal to the next general or quarter sessions.

COURT, a court is defined to be a place, appropriated to the judicial administration of justice. The law has appointed a considerable number of courts, some with a more limited, others with a more extensive jurisdiction; some of these are appropriated to enquire only, others to hear and determine; some to determine in the first instance, others upon appeal and by way of review.

The most general division of our courts, is, into such as are of record, or not; those of record, are again divided into such as are supreme, superior, or inferior.

The supreme court of this kingdom, is the high court of parliament,
ment, consisting of the king, lords, and commons, who are vested with a kind of omnipotence in making new laws, repealing and reviving old ones; and on the right balance of these, depends the very being of our constitution.

*Superior courts* of record are again, those that are more or less principal: the *more principal* ones are the lords house in parliament, the chancery, king's bench, common pleas, and exchequer: the *less principal* ones are such as are held by commission of goal delivery, oyer and terminer, assise, nisi prius, &c. by custom or charter, as the courts of the palatine of Lancaster, Chester, Durham; or by virtue of acts of parliament, and the king's commission, as the court of sewers, justices of the peace, &c.

The *inferior courts* of record, as ordinarily so called, are corporation courts, courts leet, and sheriffs torn, &c.

*Courts not of record*, are the courts baron, county courts, hundred courts, &c.

Also the admiralty, and ecclesiastical courts, which are not courts of record, but derive their authority from the crown, and are subject to the control of the king's temporal courts, where they exceed their jurisdiction. All these are bounded and circumscribed by certain laws and stated rules, to which in all their proceedings and judicial determinations, they must square themselves. Hale's. *Ac. 35.*

And here it may be proper to observe, that where a statute prohibits a thing, and appoints that the offence shall be heard and determined in any of the king's courts of record, it can be proceeded against, only, in one of the courts of Westminster Hall, Dyer, 236.

Every court of record is the king's court, though the profits may be another's; if the judges of such courts err, a writ of error lies; the truth of its records, shall be tried by the records themselves, and there shall be no averment against the truth of the matter recorded. *Co. Lit. 17.* All such courts are created by act of parliament, letters patent, or prescription, and every court by having power given it to fine and imprison, is thereby made a court of record; the proceedings of which, can only be removed by writ of error or certiorari. *Co. Lit. 260.*

A court, that is not a court of record, cannot impose any fine on an offender, nor award a capias against him, nor hold plea of debt
debt or trespass, if the debt or damages amount to 40s. nor of
trespass done *vi et armis*, though the damages are laid to be under
40s.

COURT BARON, is a court which every lord of the manor
(anciently called the barons) hath within his own precincts. This
court is an inseparable ingredient of every manor; and if the
number of the suitors should so fail, as not to leave sufficient to
make a jury or homage, that is, two tenants at the least, the ma-
nor itself is lost. 2 Black. 90.

The court baron is of two natures; the one is a customary
court, appertaining entirely to the copyholders or other customary
tenants; and of this the lord, or his steward is the judge; the other
is a court of common law, and is before the freeholders who owe
suit and service to the manor, the steward being rather register
than judge.

The copy-holders or customary court, is for grants and admit-
tances upon surrenders and descents, no presentment of the ho-
mage or jury. The homage may enquire of the death of tenants
after the last court, and who is the next heir; of fraudulent ali-
enation of lands, to defeat the lord of his profits; of rent or ser-
vice withdrawn; of escheats and forfeitures; of cutting down
trees without license or consent; of suit not performed at the lord's
mill; of waste by tenant for life; of surcharge of common; of
trespass in corn, grass, meadow, woods, hedges; of pound
breach; of removing mere stones and land marks; of by-laws not
observed and the like. The method of punishment is by amerce-
ment.

COURT OF CHANCERY. See Chancellor and Chancery.

COURT OF CHIVALRY, otherwise called the marshal court;
the judges of which were the lord constable of England, and the
earl marshal of England: but since the extinguishment of the here-
ditary office of constable, in the reign of Henry VIII. this court
has been holden before the earl marshal only, and if it exceed
its jurisdiction, it may be prohibited by the common law courts.
2 Haw. 602. It seems at this day to have a jurisdiction, as to
disputes concerning preceedency and points of honor, and satisfac-
tion therein; and may proceed against persons, for falsely as-
suming the name and arms of honourable persons. 2 Haw. 11.

This court is to be governed by its own usages, as far as they go,
and in other cases by the civil law; but since it is no court of common law, no condemnation in it causes any forfeiture of lands, or corruption of blood; neither can an error in it be remedied by a writ of error, but only by appeal to the king; yet the judges of the common law take notice of its jurisdiction, and give credit to a certificate of its judges.

COURT CHRISTIAN, so called, because as in secular courts the king's laws sway and decide causes, so in ecclesiastical courts, the laws of Christ should rule and direct; for which cause, the judges in these courts are divines, as archbishops, bishops, archdeacons, &c.

COURT OF COMMON PLEAS. See common pleas.

COURT OF DELEGATES, is the highest court for civil affairs, that concern the church. See Delegates.

COURTS ECCLESIASTICAL, are those courts which are held by the king's authority, as supreme governor of the church, for matters which chiefly concern religion. As to suits in spiritual, or ecclesiastical courts, they are for the reformation of manners; as for punishing of heresy, defamation, laying violent hands on a clerk, and the like; and some of their suits are to recover something demanded, as tithes, a legacy, contract of marriage, &c. and in cases of this nature, the court may give costs, but not damages: the proceedings in the ecclesiastical courts, are according to the civil and canon law; they are not courts of record.

COURT OF EXCHEQUER. See Exchequer.

COURT OF HUSTINGS, the highest court of record holden at Guildhall, for the city of London, before the lord mayor and aldermen, the sheriffs and recorder. 4 Inst. 247. This court determines all pleas, real and mixed; and here all lands, tenements, and hereditaments, rents and services, within the city of London and suburbs of the same, are pleadable in two hustings; one called hustings of the plea of lands, and the other, hustings of the common pleas. In the hustings of plea of lands, are brought writs of right patent, directed to the sheriffs of London. In the hustings of common pleas, are pleaded writs ex gravi querela, writs of gravelet, of dower, waste, &c. If an erroneous judgment be given in the hustings, the party grieved may sue a commission out of chancery, directed to certain persons, to examine the record, and thereupon do right.
COURT OF KING’S BENCH. See King’s Bench.

COURT OF THE LEGATE, was a court obtained by Cardinal Wolsey, of pope Leo the tenth, 9 H. VIII, wherein he had power to prove wills, and dispense with offences against the spiritual laws, &c. This court, was however of short continuance.

COURT OF MARSHALSEA. See Marshalsea.

COURT MARSHAL, is a court for punishing the offences of officers and soldiers in time of war. See 22, 29, and 32 G. II. c. 3, 6, 25, and 34.

COURT OF NISI PRIUS. See nisi prius.

COURT OF PECULIARS, a spiritual court, held in such parishes as are exempt from the jurisdiction of the bishops, and are peculiarly belonging to the archbishop of Canterbury, in whose province, there are fifty-seven such peculiars.

COURT OF PIEPOWDER, a court held in fairs, to do justice to buyers and sellers, and for redress of disorders committed in them, so called because they are most usual in summer, when the suitors to the court have dusty feet; and from the expedition in hearing causes proper thereunto, before the dust goes off the feet of the plaintiff and defendant. The court of piepowder, may hold plea of a sum above 40s. The steward before whom the court is held, is the judge, and the trial is by merchants and traders in the fair; and the judgment against the defendant shall be, quod amercietur. If the steward proceed contrary to the stat. 17 E. IV, he shall forfeit 5l.

COURT OF REQUESTS, was a court of equity, of the same nature with the court of chancery but inferior to it. This court having assumed great power to itself, so that it became hur hensome, Mich. anno 40 and 41 Eliz. in the court of common pleas, it was upon solemn argument adjudged, that the court of requests was no court of judicature, &c. and by the stat. 16 and 17, C. I. c. 10, it was taken away. 4 Inst. 97.

Court of Requests, by 41 G. III. c. 14, for extending the powers of the court of requests within the city of London, all debts amounting to 5l. due from any person resident within the jurisdiction of the city, are to be exclusively sued for and recovered. Two aldermen, and not less than twenty inhabitants householders of the several wards and districts, are appointed commissioners, and sit in rotation. The process is by summons, and
and the commissioners have power to award payment by such instalments, as are consistent with the circumstances and ability of the debtor. In this court, an attorney's privilege is of no avail.

COURT OF SESSION IN SCOTLAND. See Scotland.

COURT OF THE LORD STEWARD OF THE KING'S HOUSE. The lord steward, or in his absence, the treasurer and comptroller of the king's house, and steward of the marshalsea, may inquire of, hear and determine, in this court, all treasons, murders, manslaughters, bloodshed, and other malicious strikings, whereby blood shall be shed, in any of the palaces, and houses of the king, or in any other house wherein his royal person shall abide.

COURT OF STAR-CHAMBER, a court erected by 3 H. VII. c. 8, for punishing persons unlawfully assembling, and for other misdemeanors. But the act was repealed, and the court dissolved, by stat. 17, C. I. c. 10.

COURTS OF UNIVERSITIES, these courts are called the chancellor's courts, and are kept by the vice chancellors of Oxford and Cambridge. Their jurisdiction extends to all causes ecclesiastical and civil (except for malhem, felony, and relating to freehold) where a scholar, servant, or minister of the universities, is one of the parties to the suit. They proceed in a summary way, according to the practice of the civil law; and the judges in their sentences follow the justice and equity of the civil law, or the laws, statutes and customs of the universities, or the laws of the land at their discretion. If any erroneous judgment be given in these courts, appeal lies to the congregation; thence to the congregation; and thence to the king in chancery by his delegates.

COURTS OF WALES, by 34 and 35 H.VIII. c. 26, it is enacted, that there shall be a court of great sessions, kept twice in every year in every of the twelve counties of Wales; and the justices of those courts, may hold pleas of the crown in as large a manner as the king's bench, &c. and also pleas of assise, and all other pleas and actions real and personal, in as large a manner as the common pleas, &c.

Writs of error shall lie from judgments in this great sessions, it being a court of record, to the court of king's bench at Westminster. But the ordinary original writs of process from the king's courts at Westminster do not run into the principality of Wales, though pros-
cess or execution does, as do also prerogative writs, as writs of certiorari, quo minus, mandamus, and the like.

COURT OF WARDS AND LIVERIES, abolished by 12 C. II. c. 24. See Tenure.

COURTESY, or CURTESY OF ENGLAND, is where a man takes a wife seized of fee simple, fee-tail general, or as heir in tail-special, and hath issue by her, male or female born alive; if the wife die, the husband shall hold the land during his life by the law of England, and he is tenant by the courtesy of England.

COURT LANDS, demesnes, or land kept in demesnes, or in the lord's own hands, to serve his family.

COWS. See Cattle.

CRANAGE, is a liberty to use a crane, for the drawing up of wares from vessels at any creek, of the sea or wharf, to the land, and make profit of it. It signifies also the money taken, and paid for the same. Stat. 22, C. II. c. 11.

CRASSTINO SANCTI VINCENTII, the morrow after the feast of St. Vincent the martyr, (Jan. 22.) and is the date of the statute made at Merton. Anno 20. H. III.

CRAVENT OR CRAVEN. In a trial by battle upon a writ of right, if the appellant join in battle and cry craven, he shall lose liberam legem, that is become infamous, but if the appellee cry craven, he shall have judgment to be hanged. The word craven is still used for a coward.

CREAST or CREST, a word adopted by heralds, and applied to the device set over a coat of arms.

CREDITORS, shall recover their debts of executors, or administrators, who in their own wrong, waste, or convert to their use the estate of the deceased. 30 C. II. c. 7. Wills and devises of lands, &c. as to creditors on bonds, or other specialties, are declared void: and the creditors, may have actions of debt against the heir at law and devises; 3 & 4 W. & M. c. 14, and in favour of creditors, whenever it appears to be the testator's intent, in a will, that his land should be liable for paying his debts, in such case equity will make them subject, though there are no express words, but there must be more than a bare declaration, or it shall be intended out of the personal estate. 2 Vern. Rep. 708, where one devises that all his debts, &c. shall be first paid, if his personal estate
estate, is not sufficient to pay the creditors, it shall amount to a charge on his real estate for that purpose. Preced. Chanc. 430.

CRIMINAL CONVERSATION. See Adultery. An action for criminal conversation, is the only civil case, where an actual marriage need be proved; for in every other case, general reputation, the acknowledgment of the parties themselves, and reception by their family and friends as man and wife, is prima facie, good and admissible evidence of a marriage, though no register whatever be produced. Espinasse cases at N. P. 214. 254.

CROCUIM, CROCIA, the crosier or pastoral staff, which bishops and abbots had the privilege to carry, as the common ensign of their religious office.

CROFT, a little close, inclosed near a dwelling-house, for any particular use.

CROISES, signify pilgrims, and also the knights of St. John of Jerusalem, because they wear the sign of the cross.

CROSSES, beads, &c. used by the Roman Catholics, are prohibited to be brought into this kingdom, on pain of imprisonment, &c.

CROWN-OFFICE. The court of king's-bench, is divided into the plea side, and the crown side. In the plea side it takes cognizance of civil causes, in the crown side, it takes cognizance of criminal causes, and is thereupon called the crown-office. In the crown-office are exhibited informations in the name of the king, of which there are two kinds; 1. Those which are truly and properly the king's own suits, and filed ex-officio by his own immediate officer, the attorney-general. 2. Those in which, though the king is the nominal prosecutor, yet it is at the relation of some private person or common informer: and these are filed by the king's coroner and attorney, usually called the master of the crown-office.

CUI ANTE DIVORTIUM, is a writ, that a woman divorced from her husband, hath to recover lands or tenements from him, to whom her husband had alienated during the marriage, because she could not gainsay it.

CUI IN VITA, is a writ of entry, which a widow hath against him, to whom her husband alienated her lands or tenements in his life time; which must contain in it, that during his life (cui in vita) she could not withstand it.
CULPRIT, is not (as is vulgarly imagined) an opprobrious name given to the prisoner before he is found guilty, but it is the reply of the clerk of arraigns to the prisoner, after he had pleaded not guilty: which plea was anciently entered upon the minutes in an abbreviated form, non cul'; upon which the clerk of the arraigns, on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove him so; which is done by a like kind of abbreviation, cul'prit, signifying that the king is ready to prove him guilty (from cul that is culpabilis, guilty; and prit, prae' sto sum, I am ready to verify it). 4 Black. 339.

CULVERTAGE, was a Norman feudal term, for lands of the vassal escheated to the lord; and signified, confiscation, or forfeiture of lands and goods.

CURATE, is he who represents the incumbent of a church, parson, or vicar, and officiates divine service in his stead: and in case of pluralities of livings, or where a clergyman is old and infirm, it is requisite there should be a curate to perform the cure of the church. He is to be licensed and admitted by the bishop of the diocese, or by an ordinary, having episcopal jurisdiction: and when a curate hath the approbation of the bishop, he usually appoints the salary too; and in such case, if he be not paid, the curate hath a proper remedy in the ecclesiastical court, by a sequestration of the profits of the benefice; but if he have no licence from the bishop, he is put to his remedy at common law, where he must prove the agreement.

CURFEU, was an institution of William the Conqueror, who required, by ringing a bell at eight o'clock every evening, that all companies should immediately disperse and fire and candle be extinguished.

CURIA, it was usual for the king of England to assemble the bishops, peers, and other great men of the kingdom to some particular place, at the chief festivals in the year, and this was called curia; because they consulted about the weighty affairs of the nation.

CURIA ADVISARE VULT, a deliberation which the court sometimes takes, before they give judgment in a cause. And when judgment is stayed, upon motion to arrest it; then it is entered by the judges, curia avisare vult.
CURIA CLAUDENDA, a writ that lies against him who should fence and close up his ground, if he refuse or defer to do it.

CURIA DOMINI, the lord's court, where all the tenants, if required, were bound to attend every three weeks.

CURIA MILITUM, a court so called, anciently held a Curis-broke-castle, in the Isle of Wight.

CURRIERS. No currier shall use the trade of a butcher, tanner, &c. or shall curry skins insufficiently tanned, or gash any hide of leather, on pain of forfeiting for every hide or skin, 6s. 3d. If any currier, do not curry leather sent to him, within sixteen days between Michaelmas and Lady-day, and in eight days at other times, he shall on conviction thereof forfeit 51. Geo. II. c. 25. Every currier or dresser of hides in oil, shall annually take out a licence from the commissioners or officers of excise.

CURSITOR, an officer or clerk belonging to the chancery, who makes out original writs; of these there are twenty-four in number, and to each allotted several counties.

CURTFEYNE. The name of King Edward the Confessor's sword, which is the first sword carried before the kings of England at the coronation.

CURTILAGE, a yard, backside, or piece of ground, lying near a dwelling-house.

CURTILES TERRÆ, court lands. See Court Lands.

CUSTODE ADMITTENDO ET CUSTODE AMOVENDO, are writs for the admitting or removing of guardians.

CUSTODES LIBERTATIS ANGLIÆ, AUTHORITY PARLIAMENTI, was the style wherein writs and other judicial proceedings ran during the times of trouble from the murder of King Charles the First, till the usurpation by Cromwell, declared traitors by 12 C. II c. 3.

CUSTOM, is a law or right, not written, which being established by long use, and the consent of our ancestors, hath been, and is daily practised. If it is to be proved by record, the continuance of an hundred years will serve. Custom is either general or particular. General, when allowed through all England.

Particular is that, which belongs to this or that county, as gavelkind to Kent
General customs which are used throughout England, and are the common law, are to be determined by the judges: but particular customs, such as are used in some certain towns, boroughs, cities, &c. shall be determined by a jury. 1 Inst. 110. But the judges of the courts of king’s-bench, and common-pleas, can overrule a custom, though it be one of the customs of London, if it be against natural reason. 1 Mod. 212.

CUSTOM OF LONDON. The ancient city of London, being the metropolis and chief town for trade and commerce within the kingdom, it was necessary, that it should have certain customs and privileges for its better government, which though derogatory from the general law of the realm, yet, being for the benefit of the citizens, and for the advantage of those who trade to, and from the city, have not only been allowed good, by the judgments in the superior courts, but have also been confirmed by several acts of parliament.

The customs of London differ from all others in point of trial, for if any of the customs be pleaded, and denied, and issue be taken thereupon, the existence of such customs shall be tried by a writ directed to the mayor and aldermen, to certify whether there is such a custom or not, and they shall make their certificate by the mouth of the recorder.

These customs of London, relate to divers particulars with regard to trade, apprentices, widows, orphans, and a variety of other matters; the custom relative to the distribution of a freeman’s estate, extends only to cases of intestacy, or express agreements made in consideration of marriage. For an account of the customs of London, see Laws and Customs, &c. of London.

CUSTOMS OF MERchants. See Bills of Exchange, Bankrupts, Insurance, &c.

CUSTOMS, are used for the tribute or toll that merchants pay to the king, for carrying out and bringing in merchandize. Tonnage is a duty on wine imported, at so much a tun. Poundage a duty ad valorem, on all other merchandize at so much a pound. 1 Black. 314.

CUSTOMARY TENANTS, such tenants as hold by the custom of the manor, as special evidence.

CUSTOM HOUSE, a house in several cities and port-towns, P2 as
as London, &c. where the king's customs are received, and all business relative thercunto transacted.

CUSTOS BREVIIUM, a principal clerk belonging to the court of common-pleas, whose office is, to receive and keep all the writs returnable in that court, and put them on files, every return by itself; and at the end of every term, to receive of the prothonotaries, all the records of nisi prius, called the postea. The custos brevium, also makes entry of the writs of covenant, and the concord upon every fine, and makes forth exemplifications and copies of all writs and records in his office, and of all fines levied. The fines after they are ingressed, are to be divided between the custos brevium and chirograper; whereof the chirograper keeps always the writ of covenant, and the note; the custos brevium keeps the concord and foot of the fine. This office is in the king's gift. There is also a custos brevium et rotulorum in the king's-bench, who files such writs as are there used to be filed, and all warrants of attorney, and transcribes, or makes out the records of nisi prius, &c.

CUSTOS PLACITORUM CORONÆ, this is the same as the custos rotulorum.

CUSTOS ROTULORUM. This officer has the custody of the rolls, or records of the session of the peace. He is always a justice of the peace, and quorum in the county where he has his office.

CUSTOS OF THE SPIRITUALITIES. He who exercises spiritual or ecclesiastical jurisdiction of any diocese, during the vacancy of the see.

CUSTOS TEMPORALIUM, the person to whose custody a vacant see was committed by the king, as supreme lord; who as steward gave an account of the goods and profits to the escheator, and he into the exchequer.

CUTTER OF THE TALLIES, an officer in the exchequer, who provides wood for the tallies, and cuts the sum paid upon them, and takes them into the court to be written upon.
D.

Dairies, by 36 Geo. III. dairies or places kept solely for drying, keeping, and making cheese and butter, are exempted from the duties on windows.

Damage-feasant or faisant, is where the beasts of another come upon a man’s land, and do there feed, tread, or spoil, his corn or grass there growing; in which case, the owner of the ground, may distrain and impound them, till satisfaction be made. Wood, b. 4. c. 4.

Damage, generally signifies any hurt, or hindrance that a man receives in his estate; but in the plural in common law, are the recompense that is given to a man, by a jury, as a satisfaction for some injury sustained; as for a battery, imprisonment, slander, or trespass. 2 Black. 438.

In actions upon the case, the jury may find less damages than the plaintiff lays in his declaration, though they cannot find more; but costs may be increased beyond the sum mentioned in the declaration for damages; for costs are given in respect of the plaintiff’s suit to recover his damages, which may be sometimes greater than the damage. 10 Co. 115.

A jury may, and now frequently do, give interest on book-debts, in the name of damages.

For a more general account of damages, see 7 Vin. Abr. and 2 Buc. Abr. title, Damage.

Damage cleer, was formerly a fee or gratuity (generally a tenth part of the damages recovered) paid to the prothonotaries or clerks of the king’s-bench, common-pleas, and exchequer. But this is abolished by 17. C. II. c. 6. s. 2. And if any officer shall take any money in the name of damage cleer, or in lieu thereof; or shall delay to sign any judgment until damage cleer be paid, he shall forfeit treble the sum so taken, or demanded, to the party grieved.

Dane-gelt or Dane-geld, a tribute imposed upon our ancestors of 1s. for every hide of land, through the realm, for clearing the seas of Danish pirates, which heretofore greatly annoyed.
noyed our coasts. This Dane-gelt, was released by St. Edward the Confessor, but levied again by William the First and Second, released by Henry the First, and finally by king Stephen.

DANGER, a payment in money; made by the forest tenants, to the lord, that they might have leave, to plough and sow in time of pannage, or mast-feeding.

DATE OF A DEED, is a description of the time, viz. the day, month, year of our lord, year of the reign, &c. in which the deed was made, either expressly, or by reference to some day or year mentioned in the deed before. 2 Black. 304.

A deed may be dated at one time, and sealed and delivered at another; but every deed shall be intended to be delivered, on the very same day it bears date, unless the contrary be proved. 2 Inst. 670. Though there can be no delivery of a deed, before the day of the date, yet after there may. Yels. 138.

DAY, is either natural or artificial, the natural day consists of twenty-four hours, and contains the day solar and the night. The artificial or solar day begins at sun-rise and ends at sun-set.

In order to avoid disputes, the law generally rejects all fractions of a day: therefore if I am bound to pay monies on a certain day, I discharge the obligation if I pay it before 12 o'clock at night; after which the following day commences. 2 Black. 141.

Days in bank, are days of appearance in the court of common-pleas.

To be dismissed without day, is to be finally dismissed the court.

Days of grace. See Bills of Exchange.

DAY-LIGHT, before sun-rising, and after sun-setting, and as long as the day continues, whereby a man's countenance may be discerned; is accounted part of the common law, as to robberies, committed in the day-time, when the hundred is liable.

DAY Writ. The king may grant a writ of warrantia diei to any person, which shall save his default for one day, be it in plea of land, or other action, and be the cause true or not; and this by his prerogative.

DAYMERE OF LAND, as much arable land, as can be ploughed in one day's work.

DEADLY FEUD, a profession of an irreconcileable enmity.
till revenge be obtained, even by the the death of that enemy, and allowed by our ancient Saxon laws till pecuniary satisfaction were made to the kindred.

DEAF, DUMB, AND BLIND, a man born deaf, dumb, and blind, is considered by the law as an idiot; he being supposed incapable of understanding, as not having those senses which furnish the mind with ideas. Black. 308.

DEAFORESTED, discharged from being forest, or exempted from the forest laws.

DEAN, an ecclesiastical magistrate, or dignitary, he is next under the bishop, and chief of the chapter, ordinarily in a cathedral church.

There are four sorts of deans and deaneries. The first is a dean who hath a chapter consisting of prebendaries or canons, subordinate to the bishop, as a council assistant to him in matters spiritual, relating to religion, and in matters temporal, relating to the temporalities of his bishopric: The second is a dean who hath no chapter, and yet he is representative and hath cure of souls, he hath a peculiar, and a court wherein he holds ecclesiastical jurisdiction; but he is not subject to the visitation of the bishop or ordinary; such is the dean of Battle in Sussex: The third dean is also ecclesiastical, but the deanery is not representative, but donative, nor hath any cure of souls, but he is only by covenant or condition; and he hath also a court and peculiar, in which he holds plea and jurisdiction, of all such matters and things as are ecclesiastical, and which arise within his peculiar, which oftentimes extends over many parishes; such a dean constituted by commission from the metropolitan of the province, is the dean of the Arches, and the dean of Bocking in Essex. The fourth sort of dean, is he, who is usually called the rural dean; having no absolute judicial power in himself, but is to order the ecclesiastical affairs within his deanery and precinct, by the direction of the bishop or of the archdeacon; and is a substitute of the bishop in many cases.

DEATH OF PERSONS, there is a natural death of a man, and a civil death; natural where nature itself expires and extinguishes; and civil, where a man is not actually dead but is adjudged so by law. If any person, for whose life any estate hath been
been granted, remain beyond sea, or is otherwise absent seven years, and no proof made of his being alive; such person shall be accounted naturally dead; though if the party be afterwards proved living at the time of eviction of any person, then the tenant, &c. may re-enter and recover the profits. Stat. 19. C. II. c. 6.

And persons in reversion or remainder, after the death of another, upon affidavit that they have cause to believe such other dead, may move the lord chancellor to order the person to be produced; and if he be not produced, he shall be taken as dead; and those claiming may enter, &c. 6 Anne, c. 18.

DEATH'S PART, or deadman's part, is that portion of his personal estate, which remained after his wife and children had received thereout their respective reasonable parts; which was, if he had both a wife and a child, or children, one third part; if a wife and no child, or a child or children, and no wife, one half; if neither wife nor child, he had the whole to dispose of by his last will and testament; and if he made no will, the same was to go to his administrators. And within the city of London, and throughout the province of York, at this day in case of intestacy, the wife and children are entitled to their said reasonable part, and the residue only is disputable by the Statute of Distribution.

DEAWARRENNATS, diswarrened, as when a warren were broke up.

DE BENE ESSE, in law signification, is to accept or allow a thing as well done for the present, thus judges frequently take bail, and declarations are frequently delivered de bene esse, or conditionally, until special or common bail be filed.

DEBENTURE, is a certificate delivered at the custom-house, when the exporter of any goods or merchandize has complied with the regulations prescribed by certain acts of parliament, in consequence of which, he is entitled to a bounty or drawback on the exportation.

Stealing debentures was made felony by 2 Geo. II. c. 25. s. 3.

DEBET ET DETINEI, are Latin words used in the bringing of writs and actions. And an action shall always be in the debet et detinei, when he who makes a bargain or contract, or lends money
money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract or bargain, or unto the lending of money, &c.

DEBET ET SOLET, if a man sue to recover any right by writ, whereof his ancestor was disseised by the tenant or his ancestor, then he uses only the word debet in his writ; because solet is improper, as his ancestor was disseised, and the custom discontinued; but if he sue for any thing that is now first of all denied, then he uses both these words debet et solet; because his ancestor before him, and he himself usually enjoyed the thing sued for.

DEBT, a sum due from one person to another, in consequence of work done, goods delivered, or money or other value, for which reimbursement has not been made.

The non-payment in these cases, is an injury, for which the proper remedy is by action of debt, to compel the performance of the contract, and recover the special sum due. 4 Co. 90.

Actions of debt are now seldom brought but upon special contracts under seal; wherein the sum due, is clearly and precisely expressed: for in case of such an action upon simple contract, the plaintiff labours under two difficulties; first, the defendant has here the same advantage as in an action of detinue, that of waging his law, namely, purging himself of the debt by oath, if he think proper; secondly, in an action of debt, the plaintiff must recover the whole debt he claims, or nothing at all. For the debt is one single cause of action, fixed, and determined; but in an action upon the case, or what is called an indebitatus assumpsit, which is not brought to compel a specific performance of the contract, but to recover damages for its non-performance; these damages are in their nature indeterminate, and will therefore adapt and proportion themselves to the truth of the case, which shall be proved; without being confined to the precise demand stated in the declaration. 3 Black. 154.

DEBTOR. The gaoler shall not put, keep, or lodge prisoners for debt, and felons, together in one room or chamber, on pain of forfeiting his office, and treble damages to the party grieved. 22 & 23 C. II. c. 20.

But every gaoler ought to keep such prisoner in safe and close custody;
custody; safe, that he cannot escape; and close, without conference with others, or intelligence of things abroad. Dalt. c. 170.

DECEMNARY, was originally a district of ten men with their families, the inhabitants whereof living together, were sureties or pledges for each other's good behaviour. See Constable.

DECEPTIONE, a writ that lies properly against him who deceitfully does any thing in the name of another, for one that receives damage or hurt thereby.

DECIES TANTUM, a writ that lies against a juror, who hath taken money for giving his verdict, called so of the effect, because it is to recover ten times as much as he took. Stat. 98. Edw. III. c. 12 and 13. Decies tantum lies against sheriffs taking a reward for arraying a panel. 11 H. VI. c. 14. See Vin. Abr. 378, & 382.

DECINERS, DECCNIERS, or DOSINERS, such as were anciently, appointed to have the oversight and check of ten fri­burghs for the maintenance of the king's peace.

DECLARATION, is a shewing in writing the grief and complaint of the demandant, or plaintiff, against the defendant or tenant wherein he is supposed to have done some wrong. And this ought to be plain and certain, both because it impeaches the defendant, and also compels him to answer thereto. Such a declaration in an action real, is termed a count, and it is essential, that the count or declaration ought to contain, demonstration, declaration, and conclusion; and in the conclusion the plaintiff ought to aver, and offer to prove his suit, and shew the damages he has sustained by the wrong done him. Declaration, must be certain, containing; 1. such sufficient certainty whereby the court may give a peremptory and final judgment upon the matter in controversy. 2. The defendant may make a direct answer to the matter contained therein. 3. That the jury, after issue joined, may give a complete verdict thereupon. 4. No blank or space, to be left therein. Brown's Annu. 3.

By the general rules of law, a plaintiff must declare against a defendant, within twelve months after the return of the writ: but by the rules of court, if he do not deliver his declaration within two terms, the defendant may sign judgment of non pros, though unless he take such advantage of the plaintiff's neglect, the plain­
tiff may still deliver a declaration within the year. 2 Durnf. and East. 112 and 3 Durnf. and East. 123.

**DECREES** is a sentence pronounced by the lord chancellor in the court of chancery, and it is equally binding upon the parties, as a judgment in a court of law.

By the laws of England, a decree (notwithstanding any contempt thereof) shall not bind the goods or moveables, but only charge the person. Chan. Rep. 193.

If a decree be obtained and enrolled, so that the cause cannot be reheard, then there is no remedy but by bill of review, which must be on error appearing on the face of the decree, or on matters subsequent thereto, as a release or a receipt discovered since. 3 M'n's. Rep. 371.

**DECRETALS** is a volume of the canon laws, containing the decrees of sundry popes. See Canon Law.

**DEDBANNA** is an actual homicide or manslaughter.

DEDI, a warrant in law, to the feoffee and his heirs; as if it be said in a feoffment, A. B. hath given and granted, &c.

**DEED** is a written contract sealed and delivered. It must be written before the sealing and delivery, otherwise it is no deed; and after it is once formally executed by the parties, nothing can be added or interlined; and therefore, if a deed be sealed and delivered with a blank left for the sum, which the obligee fills up after sealing and delivery, this will make the deed void.

A deed must be made by parties capable of contracting, and upon a good consideration; and the subject matter must be legally and formally set out.

The formal parts of a deed are:

- **The premises**, containing the number, names, additions, and titles of the parties.
- **The habendum**, which determines the estate and interest intended to be granted by the deed.
- **The reddendum**, or reservation, whereby the grantor reserves to himself something out of the thing granted.
- **A condition**, which is a clause of contingency, on the happening of which, the estate granted, may be defeated.
- **The warranty**, whereby the grantor for himself, and heirs, warrants or secures to the grantee, the estate so granted.
- **The covenants**, which are clauses of agreement contained in the deed,
deed, whereby the contracting parties stipulate for the truth of certain facts, or bind themselves to the performance of some specific acts.

The conclusion, which mentions the execution and date of the deed, or the time of its being given or executed, either expressly or with reference to some day and year before mentioned.

A deed may be either an indenture, or a deed-poll. The former derives its name, from being indented or cut in an uneven manner, so as to tally with the counterparts, of which there ought to be as many as there are parties; the latter, or deed-poll, of which there is one part only, is so called from its being polled or shaven quite even.

A deed is the most solemn act of law which a man can perform with respect to the disposition of his property, and therefore no person shall be permitted to aver or prove any thing against his own deed.

All the parts of a deed indented, constitute in law but one entire deed; but every part has the same operative force as all the parts taken together, and they are deemed the mutual or reciprocal acts of either of the parties, who may be bound by either part of the same, and the words of the indenture may be considered as the words of either party.

If the name of baptism or surname of a party to a deed be mistaken, as John for Thomas, &c. this has been held to be dangerous. 2 Bulst. 70.

But any mistake as spelling &c. not deviating from the substance of the deed, will not render it void.

If a man get another name in common esteem than his right name, any deed made to him under such name, will be valid.

Every deed must be founded upon good and sufficient consideration; not upon an usurious contract, nor upon fraud or collusion, either to deceive bona fide purchasers, or just and lawful creditors; any of which considerations will vacate the deed, and subject the parties to forfeitance, and in some cases to imprisonment.

A deed also without any consideration is void, and is construed to enure only to the benefit of the party making it.

Considerations may be express or implied. An express consideration, is where a man contracts to do a certain act for a certain sum
sum of money, or other equivalent act; and an implied consideration, is, when it may be enforced by law; thus if a person do any work, or receive any goods from another, the law implies a consideration, which it will enforce, although there was no specific agreement for remuneration.

A deed must be written upon the proper stamps prescribed by the legislature, otherwise it cannot be given in evidence. See Stamps.

The written matter of a deed, must be set forth in a legal and orderly manner, so as that there are words sufficient to explain the meaning of the parties, and at the same time to bind them to the execution of their contract; and of this sufficiency the courts of law are to determine. Although it is not indeed absolutely necessary in law, to have all the formal words which are usually drawn out in deeds, provided there be sufficient words legally and clearly to explain the meaning of the parties, yet as these formal or orderly parts, are calculated to convey the meaning of the parties in the most clear, distinct, and effectual manner, and have been well considered and sanctioned by the wisdom of successive ages, it is prudent not to depart from these without good reason, and the most urgent necessity.

The force and effect which the law of England gives to a deed under seal, cannot exist, unless such deed be executed by the party himself, or by another for him, in his presence, or with his direction; or in his absence, by an agent authorized so to do, by another deed also under seal, and in every such case, the deed must be made and executed in the name of the principal.

A deed takes effect only from the day of delivery, and therefore if it have no date, or a date impossible, the delivery will in all cases ascertain the date of it; and if another party seal the deed, yet if the party deliver it himself, he thereby adopts the sealing and signing, and by such delivery makes them both his own.

The delivery of a deed may be alleged at any time after the date, but, unless it be sealed, and regularly delivered, it is no deed.

Another requisite of a deed is, that it be properly witnessed or attested; the attestation, is however, necessary, rather for pre-
serving the evidence, than as intrinsically essential to the validity of the instrument.

There are four principles adopted by the courts of law for the exposition of deeds; viz.

That they be beneficial to the grantee or person in whose favor they are intended to operate.

That where the words may be employed to some interest, they shall not be void.

That the words be construed according to the meaning of the parties, and not otherwise; and the intent of the parties shall be carried into effect, provided such intent can possibly stand at law.

That they are to be consonant to the rules of law, and deeds shall be expounded reasonably without injury to the grantor, and to the greatest advantage of the grantee. Deeds are further expounded upon the whole; and, if the second part contradict the first, such second part shall be void; but if the latter expound or explain the former, which it may, both parts may stand.

In construction of law, the first deed and the last, will stand in force; and where a deed is by indenture between parties, none can have an action upon such deed, but the person who is a party to it. In a deed-poll however, one person may covenant with another who is not a party, to do certain acts; for the nonperformance of which he may bring his action.

Where a man justifies title under any deed, he ought to produce that deed; if it be alleged in pleading, it must be produced to the court, that it may determine whether the deed contain sufficient words to make a valid contract.

DEED-POLL, is a deed polled, or shaven, quite even, in contradistinction from an indenture, which is cut unevenly, and answerable to another writing that comprehends the same words. A deed poll is properly single, and but of one part, and is intended for the use of the feoffee, grantee, or lessee; an indenture always consists of two or more parts and parties. Every deed that is pleaded, shall be intended to be a deed-poll, unless it be alleged to be indented. See Deed, and Stamp.

DEEMSTERS, or DEMSTERS, all controversies in the Isle of Man, are decided without process, writings, or any charges, by certain
certain judges called Deemsters whom they choose from among themselves.

DEER. See Forest.

DE EFFENDO QUIETUM DE TELONIO. A writ which lies for those who are by privilege freed from the payment of toll.

DE EXPENSIS MILITUM, a writ commanding the sheriff to levy so much a day for the expenses of a knight of the shire, and a like writ to levy two shillings a day for every citizen and burgess, called de expensis civium et burgensium. 4 Inst. 46.

DEFACTO. A thing really and actually done.

DEFAMATION, the offence of speaking slanderous words of another; and where any person circulates any report injurious to the credit or character of another, the party injured, may bring an action to recover damages proportioned to the injury he has sustained; but it is incumbent upon the party, to prove that he has sustained an injury, to entitle him to damages. In some cases however, as for words spoken which by law, are in themselves actionable, as calling a tradesman a bankrupt, cheat, or swindler, &c. there is no occasion to prove any particular damage, but the plaintiff must be particularly attentive to state words precisely as they were spoken, otherwise he will be nonsuited.

DEFAULT, is commonly taken for non-appearanee in court at a day assigned, if a plaintiff make default in appearance in a trial at law, he will be non-suited; and where a defendant makes a default, judgment shall be had against him by default.

DEFAULT IN CRIMINAL CASES. If an offender, being indicted, appear at the capias, and plead to issue, and is let to bail to attend his trial, and then make default; here the inquest, in case of felony, shall never be taken by default, but a capias ad audiendum juratum shall issue, and if the party be not taken, an exigent; and if he appeared on that writ, and then make default, an exigi facias de novo may be granted: but where, upon the capias on exigent, the sheriff returns cepi corpus, and at the day hath not his body, the sheriff shall be punished, but no new exigent awarded because in custody of record. 2 H. H. 202.

DEFAULT OF JURORS. If jurors make default in their appearance for trying of causes, they shall forfeit their issues, unless they have any reasonable excuse proved by witnesses, in which Q 2 case
DEFEASANCE, a condition relating to a deed, as to a recognizance or statute, which being performed by the recognizor, the deed is defeated, and made void, as if it had never been done. The difference between a proviso, or a condition in a deed, and a defeasance, is, that the condition is annexed to, or inserted in the deed or grant; and a defeasance is a deed by itself, concluded and agreed on between the parties, and having relation to another deed.

DEFENCE, in its legal signification, is merely an opposing or denial of the truth or validity of the declaration; or a general assertion that the plaintiff hath no ground of action; which assertion is afterwards extended and maintained in his plea.

DEFENDANT, is the party that is sued in an action personal; as tenant is he that is sued in an action real.

DEFENDEMUS, is a word used in a feoffment or donation, and hath this force, that it binds the donor and his heirs to defend the donee, if any man go about to lay any servitude upon the thing given, other than is contained in the donation.

DEFENDER OF THE FAITH, a peculiar title given to the king of England by pope Leo the tenth to king Henry the eighth, for writing against Martin Luther in behalf of the church of Rome, then accounted domicilium fidei catholicae.

DEFENDERERE SE PER CORPUS SUUM, to offer duel or combat, as a legal trial on appeal. See Battel.

DEFENSA, a park or place fenced in for deer, and defended as a property, and peculiar for that use and service.

DEFENSIVA, the lords or earls of the marches, the wardens and defenders of the country.

DEFORCEMENT, a withholding lands or tenements by force from the right owner.

DEFORCEANT or DEFORCEOR, one who overcomes and casts out by force, and differs from a disseisor, because, a man may disseise another without force, but a man may deforce another that never was in possession; as, if many have a right to lands as common heirs, and one entering keep out the rest, the law saith, that he deforceth them, though he do not disseise them.

DEGRADATION, an ecclesiastical censure, whereby a clergymen
gyman is deprived of his holy orders which formerly he had, as of priest, or deacon. Cod. Rep. 309.

DEI JUDICIUM, the ordeal, was so called, because it was thought an appeal to God for the justice of a cause. See Ordeal.

DELEGATES, court of, is so called, because by stat. 26 H. VIII. c. 19, the judges thereof, are delegated by the king's commission under the great seal, to hear and determine appeals in the three following cases: 1. where a sentence is given in any ecclesiastical cause by the archbishop or his official. 2. When any sentence is given in any ecclesiastical cause in the places exempt. 3. When a sentence is given in the admiral's court, in suits civil and marine, by order of the civil law. This commission is usually filled with lords spiritual and temporal, judges of the courts at Westminster, and doctors of the civil law. 4 Inst. 339.

DELIVERANCE, a criminal brought to trial, to which pleading not guilty, he puts himself on God and his country; the clerk of the crown wishes him a good deliverance.

DELIVERY OF DEEDS. See Deed.


DEMAIN or DEMESNE, signify the king's lands appertaining to him in property. No common person hath any demains simply understood, for we have no land (that of the crown only excepted) which is not holden of a superior; for all depends either mediatey, or immediately of the crown: thus, when a man in pleading would signify his land to be his own, he says that he is or was seized thereof in his demain as of fee; whereby he means, that although his land be to him and his heirs for ever, yet it is not true demain, but depending upon a superior lord, and holding by service, or rent in lieu of service, or by both service and rent.

DEMAND, calling upon a man for any sum or sums of money, or any other thing due. By the several statutes of limitation, debts, claims, &c. are to be demanded and made in time, or they will be lost by law.

There are two manner of demands, the one in deed, the other in law; in deed, as in every preceipe there is an express demand; in law, as in every entry in land, distress for rent, taking or seizing of goods, and such like acts, which may be done without any words, are demands in law.

Where there is a duty which the law makes payable on demand,
DE  [ 174 ]  DE  

no demand need be made; but if there be no duty till demand, in such case there must be a demand to make the duty. 1 Lit. 432. Upon a penalty the party need not make a demand; as if a man be found to pay 20l. on such a day, and in default thereof to pay 40l. the 40l. must be paid without demand.

If a person release to another all demands, this is the best release, the releasee can have, as he is thereby excluded from actions, duties, and seizures.

DEMANDANT, the plaintiff in a real action, so called because he demandeth lands, &c.

DEMISE, is applied to an estate in fee simple, fee tail, or for term of life, and so it is commonly taken in many writs. 2 Inst. 483.

The king’s death is in law termed the devise of the king to his successor.

DEMURRANCE, is an allowance made to the master of a ship by the merchants, for being detained in port longer than the time appointed and agreed for his departure. The rate of this allowance, is generally settled in the charter party.

It is now firmly established that the claim of demurrage ceases, as soon as the ship is cleared out, and ready for sailing. Jameson v. Laurie. House of lords, Nov. 10, 1796.

DEMURRER, is a kind of pause or stop, put to the proceedings of an action upon a point of difficulty, which must be determined by the court, before any farther proceedings can be had therein.

He that demurs in law, confesses the facts to be true, as stated by the opposite party; but denies that by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a lawful excuse. As if the matter of the plaintiff’s declaration be insufficient in law, then the defendant demurs to the declaration; if, on the other hand, the defendant’s excuse or plea be invalid, the plaintiff demurs in law to the plea; and so in every other part of the proceedings, where either side perceives any material objection in point of law, upon which he may rest his case. 3 Black, 314.

General demurrer being entered, it cannot be afterwards waved, without leave of the court; but a special demurrer generally
rally may, unless the plaintiff have lost a term, or the assizes, by the defendant's demurring. *Impey. i. K. B.*

And upon either a general or special demurrer, the opposite party avers it to be sufficient, which is called a *rejoinder in demurrer*, and then the parties are at issue in point of law: which issue in law, or demurrer, is argued by counsel on both sides; and if the points be difficult, then it is argued openly by the judges of the court, and if they, or the majority of them concur in opinion, accordingly judgment is given: but in case of great difficulty, they may adjourn into the exchequer chamber, where it shall be argued by all the judges. 1 *Inst. 71.*

**DEMURRER TO EVIDENCE**, is where a question of law arises thereon, and because juries, by direction of the court, usually find a doubtful matter specially, *demurrers upon evidence* are now seldom used. 5 *Rep. 104.*

**DEMURRER TO INDICTMENTS**, if a criminal join issue upon a point of law in an indictment or appeal, allowing the fact to be true as laid therein, this is a demurrer in law: by which he insists that the fact as stated, is no felony or treason, or whatever the crime is alleged to be. But *demurrer to indictments* are seldom used, since the same advantages may be taken upon a plea of not guilty; or afterwards in arrest of judgment, where the verdict has established the fact. 4 *Black. 383.*

**DEMY SANGUE**, of the half blood, as when a man marries a woman, and hath issue by her a son or a daughter, and the wife dying, he takes another woman, and hath by her also a son or daughter; now these two sons or daughters, are but of the half blood, because they are not brothers or sisters by the mother's side, as having different mothers, and therefore cannot be heirs to one another; for he that shall claim as heir to one by descent, must be of the whole blood to him from whom he claims. *Cowel.*

**DEN AND STROND**, liberty for ships or vessels to run a ground, or come ashore. This privilege was granted to the barons of the cinque ports by king Edw. I.


**DENARIUS DEI**, God's penny, or earnest money given and received to enforce contracts.
DENELAGE or DANELAGE, the law that the Danes made in England.

DENIZEN, a Denizen is an alien born, who has obtained letters patent whereby he is constituted an English subject. A Denizen is in a middle state, between an alien and a natural born or naturalized subject, partaking of the nature of both. He may take lands by purchase, or derive a title by descent through his parents or any ancestor, though they be aliens. By Stat 25 G. II. c. 39, no natural born subject shall derive a title through an alien parent or ancestor, unless he be born at the time of the death of the ancestor, who dies seized of the estate which he claims by descent; with this exception, that if a descent shall be cast upon a daughter of an alien, it shall be divested in favor of an after-born son, and in case of an after born daughter or daughter only, all the sisters shall be coparceners. The children born previous to the dezination of their parent cannot inherit by descent, whilst those of a foreigner naturalized, are in every respect, entitled to the same privileges as British subjects. See Alien.

DEODAND, is where any moveable thing inanimate, or beast animate, moves or causes the death of any reasonable creature, by mischance, without the will or fault of himself, or of any person. 3 Inst. 57.

Formerly wherever the thing which was the occasion of a man's death was in motion at the time, not only that part thereof which immediately wounded him, but all things which moved together with it, and helped to make the wound more dangerous, were forfeited also. 1 Haw. 66. But juries have lately determined very differently. As these forfeitures seem to have been originally founded in the superstition of an age of ignorance, they are now discountenanced in Westminster hall. Post. 266.

DEONERANDA PRO RATA PORTIONIS, is a writ that lies where one is distrained for a rent, that ought to be paid by others proportionably with him.

DEPARTURE from a plea or matter, is where a man pleads a plea in bar of an action, which being replied to, doth in his rejoinder shew another matter contrary to his first plea, that is called a departure from his bar. It may also be applied to a plaintiff, who in his replication shews new matter from his declaration. Plowd. Com. 7, 8. Co. 2. par. Fo. 147.

DEPOSITION.
DEPOSITION. Proof in the high court of chancery is by the depositions of witnesses; and the copies of such, regularly taken and published, are read as evidence at the hearing. For the purpose of examining witnesses in or near London, there is an examiner's office appointed: but for such as live in the country, a commission to examine witnesses is usually granted to four commissioners, two named on each side, or any three or two of them to take the depositions there. And if the witnesses reside beyond sea, a commission may be had to examine them there, upon their own oaths; and, if foreigners, upon the oaths of two skilful interpreters. The commissioners are sworn to take the examinations truly and without partiality, and not to divulge them till published in the court of chancery; and their clerks are also sworn to secrecy. The witnesses are compellable by process of subpæna, as in the courts of common law, to appear and submit to examination. And when their depositions are taken, they are transmitted to the court with the same care, that the answer of a defendant is sent. 3 Black, 445.

DEPRIVATION, is an ecclesiastical censure, whereby a clergyman is deprived of his parsonage, vicarage, or other spiritual promotion of dignity. Degg's Parson's Counsellor. C. 9.

Causes of deprivation: if a clerk obtain preferment in the church by simonical contract, if he be an excommunicate, a drunkard, fornicator, adulterer, infidel, or heretic; or guilty of murder, manslaughter, perjury, forgery, &c. if a clerk be illiterate, and not able to perform the duty of his church; if he be a scandalous person in life and conversation; or bastardy is objected against him; if he be under age, viz. the age of twenty-three years; be disobedient and incorrigible to his ordinary; or a nonconformist to the canons; if he refuse to use the common prayer; or preach in derogation of it; do not administer the sacrament, or read the articles of religion, &c. if any parson, vicar, &c. have one benefice with cure of souls, and take plurality, without a faculty or dispensation: or if he commit waste in the houses and lands of the church, called dilapidations; all these have been held good causes for deprivations of priests. Deg. Par. Coun. 98, 99.

DEPUTY, one who performs an office or duty in another's right: where an office is granted to a man and his heirs, he may make an assignee of that office, and consequently a deputy. 9 Rep. 47.

There
There is great difference between a deputy, and assigee of an office; for an assigee hath an interest in the office itself, and does all things in his own name; for which his grantor shall not answer unless in special cases; but a deputy hath not any interest in the office, but is only the shadow of an officer, in whose name he does all things. 9 Rep. 49.

A superior officer must answer for his deputy in civil actions, if he be not sufficient: but in criminal cases it is otherwise, where deputies are to answer for themselves. 2 Inst. 191.

Descent, or hereditary succession, is the title of which a man on the death of his ancestor, acquires his estate by right of representation, as his heir at law: and an estate so descending to the heir, is in law called the inheritance. 2 Black, 201.

Descent is of three kinds; by common law, by custom, or by statute. By common law, as where one hath land of inheritance in fee-simple, and dieth without disposing thereof in his lifetime, and the land goes to the eldest son and heir of course, being cast upon him by the law.

Descent of fee-simple by custom, is sometimes to all the sons, or to all the brothers (where one brother dieth without issue), as in gavel-kind; sometimes to the youngest son, as in borough English; and sometimes to the eldest daughter, or the youngest, according to the customs of particular places. Descent by statute is of fee-tail, as directed by the statute of Westminster, 2. de donis.

Descent at common law is either lineal, or collateral: lineal consanguinity, is that which subsists between persons, of whom one is descended in direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards, in a direct ascending line; or between a man and his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation, in this lineal direct consanguinity, constitutes a different degree, reckoned either upwards or downwards; the father is related in the first degree, and so likewise is the son, grand sire and grandson in the second; great-grandsire, and great-grand son in the third. This is the only natural way of reckoning the degrees in the direct line, and therefore universally obtains, as well in the civil and canon, as in the common law.

Collateral kindred answers to the same description; collateral relations
relations agreeing with the lenial in this, that they descend from the same stock or ancestor; but different in this, that they do not descend one from the other. Collateral kinsmen are therefore such as lineally spring from one and the same ancestor, who is the stirps or root, stipes, trunk or common stock, from whence these relations are branched out. As if a man have two sons, who have each a different issue; both these issues are lineally descended from him as their common ancestor; and they are collateral kinsmen to each other, because they are all descended from this common ancestor, and all have a portion of his blood in their veins, which denominates them consanguineors.

Inheritances shall lineally descend to the issue of the person last actually seized, in infinitum, but shall never lineally ascend. 3 Black, 208.

The male issue shall be admitted before the female; and where there are two or more males in equal degree, the eldest only shall inherit (except where there are particular local customs to the contrary): but the females shall inherit all together, except in case of succession to the crown, which is indivisible; and of succession to dignities and titles of honour: yet where a man holds an earldom to him and the heirs of his body, and dies, his eldest daughter shall not succeed of course to the title of countess, but the dignity is in suspense or abeyance, till the king shall declare which of the daughters shall have that title. 2 Black, 216.

DESCENT OF CROWN LANDS, all the lands whereof the king if seized in jure coronae, shall attend upon and follow the crown; so that to whomsoever the crown descends, those lands and possessions descend also. Plowd. 247.

DESCENT OF DIGNITIES, the dignity of peerage is personal, annexed to the blood, and so inseparable, that it cannot be transferred to any person, or surrendered even to the crown; it can move neither backward nor forward, but only downward to posterity; and nothing but corruption of blood, as if the ancestor be attainted of treason or felony, can hinder the descent to the right heir. Lex. Const. 85.

DESCRIPTION. In deeds and grants there must be a certain description of the lands granted, the places where they lie, and the persons to whom granted, &c. to make them good. But wills are o refavoured than grants as to those descriptions; and a wrong description.
description of the person, will not make a devise void, if there be otherwise a sufficient certainty, what person was intended by the testator. 1 Nels. Abr. 647.

Where a first description of land, &c. is false, though the second be true, a deed will be void: contra, if the first be true, and the second false. 3 Rep. 2, 3, 8 and 10.

DE SON TÖRT DEMESNE, words of form used in an action of trespass, by way of reply to the defendant's plea.

DETRINUE is a writ which lies where any man comes to goods or chattels either by delivery, or by finding, and refuseth to redeliver them; and it lies only for the detaining, when the detaining was lawful. 1 Inst. 286.

In this writ the plaintiff shall recover the thing detained; and therefore it must be so certain, as that it may be specifically known. Therefore it cannot be brought for money, corn, or the like, for that cannot be known from other money or corn, unless it be in a bag or sack, for then it may be distinguishably marked. Ibid.

But detinue may be brought for a piece of gold of the price of 21s. though not for 21s. in money; for here is a demand of a particular piece. Buller. N. P. 50.

In order therefore to ground an action of detinue, which is only for the detaining, these points are necessary: 1. That the defendant came lawfully by the goods, as either by delivery to him, or finding them. 2. That the plaintiff have a property. 3. That the goods themselves be of value. And 4. that they be ascertained in point of identity. Upon this, the jury, if they find for the plaintiff, assess the respective values of the several parcels detained, and also damages for the detension, and the judgment is conditional, that the plaintiff recover the said goods, or (if they cannot be had) their respective values, and also the damages for detaining them. Id.

DETRINUE OF CHARTERS, an action of detinue lies for charters which make the title of lands; and the heir may have detinue of charters, although he have not the land. But if they concern the freehold, the action must be in the common-pleas, and no other court.

DETRINUE OF GOODS IN FRANK MARRIAGE, is when a divorce has taken place betwixt a man and his wife, after which,
which, the wife shall have this writ of detinue, for the goods given with her in marriage.

DEVASTAVIT or DEVASTUERUNT BONA TESTATORI, is a writ that lies against executors, for paying debts of simple contract, before debts on bonds, and specialties, or the like; for in this place the executors are liable to action, as if they had wasted the goods of the testator riotously, or converted them to their own use; and are compellable to pay such debts by speciality out of their own goods, to the value of what they paid so illegally. Cowel.

By the 30 C. II. c. 7, if an executor de son tort waste the goods, and die, his executors, shall be liable in the same manner as their testator would have been, if he had been living. And it has been since adjudged, that a rightful executor, who wastes the goods of the testator, is in effect an executor de son tort, for abusing his trust. 3 Mod. 113, and his executor or administrator is made liable to a devastavit by 4 & 5 W. & M. c. 94.

DEVENERUNT, a writ directed to the escheator, when any tenant of the king holding in capite, died; and when his son and heir, within age, and in the king's custody, died; then this writ issued, commanding the escheator, that he, by the oath of good and lawful men, inquire what lands and tenements, by the death of the tenant, came to the king. Dyer. 360, pt. 4.

DEVISE, is a disposition of lands, &c. by a last will and testament, to take effect after the death of the deviser. Co. Lit. 111. 6.

DIAMOND, diamonds and precious stones, may be imported duty free, saving the duty granted to the East-India company, on diamonds imported from any place within the limits of their charter. 6 Geo. II. c. 7. s. 1. 2.

DICTUM DE KENELWORTH, an edict or award between king Henry III. and the barons, and others, who had been in arms against him, containing a composition for five years rent, for the lands and estates of those, who had forfeited them in that rebellion; so called, because it was made at Kenelworth Castle in Warwickshire.

DIEM CLAUDIT EXTREMUM, a writ issuing out of Chancery to the escheator of the county, upon the death of any of the king's tenants in capite, to inquire by a jury of what lands
Dr. Hl... died seised, and of what value, and who was next heir to him.

DIES, there are many see-farm rents, as they are called, reserved to the king in so many days and nights provision.

DIES MARCHIE, the day of congress between the English and Scotch, appointed to be helden annually on the marches, or borders, to adjust all differences.

DIEU ET MON DROIT, God and my right, the motto of the royal arms; intimating, that the king of England holds his empire of none but God. It was assumed by Richard the First.

DIEU SON ACT, are words often used in our law; and it is a maxim, that the act of God shall prejudice no man: and therefore if a house be beaten down by tempest or other act of God, the lessee for life, or years, shall not only be quiet in action of waste brought against him, but hath by law a special interest, to take timber to build the house again, if he will, for the habitation. Co. lib. 4. 63. When the condition of a bond or obligation, consists of two parts disjunctive, and both are possible at the time of the obligation made, and afterwards one of them becomes impossible by the act of God, the obligor is not bound to perform the other part, for the condition shall be taken beneficially for him. Co. lib. 5. 22.

DIGNITY, signifies honour and authority, &c. and may be divided into superior and inferior: as the titles of duke, earl, viscount, baron, &c. are the highest names of dignity; and those of baronet, knight, esquire, &c. are the lowest order. Nobility only, can give so high a name of dignity, as to supply the want of a surname in legal proceedings: and as the omission of a name of dignity, may be pleaded in abatement of a writ, &c. so it may be where a peer, who has more than one name of dignity, is not named by the most noble. 2 Haw. P. C. 185. 239. No temporal dignity of any foreign nation, can give a man a higher title than that of esquire. 2 Inst. 667. See Addition.

DIGNITY ECCLESIASTICAL, ecclesiastical dignities, are those of archbishop, bishop, dean, archdeacon, and prebendary, and the possessor of these dignities are called dignitaries. Of dignities and prebends, Camden reckons 544 in England.

DIKES, broken down secretly, to be repaired by the towns adjoining. St. West. 2. 13 Ed. I. c. 46. 6 Geo. I. c. 16.
DILAPIDATION, is where an incumbent of a church-living, suffers the parsonage-house or out-houses to fall down, or be in decay for want of necessary reparations; or it is the pulling down or destroying any of the houses or buildings belonging to a spiritual living, or destroying of the woods, trees, &c. appertaining to the same; for it is said to extend to committing or suffering any wilful waste, in or upon the inheritance of the church. Deg. Pars. cons. 89.

By 13 Eliz. c. 10, if any ecclesiastical persons, who are bound to repair the buildings, whereof they are seised in right of their place or function, suffer them to fall into decay for want of repair, and make fraudulent gifts of their personal estate, with intent to hinder their successors from recovering dilapidations against their executors or administrators, in such case the successors shall have like remedy in the ecclesiastical court, against the grantees of such personal estate, as he might have against the executor or administrator of the predecessor.

By 14 Eliz. c. 11, all monies recovered by dilapidations, shall within two years be employed upon the buildings for which they were paid, on pain of forfeiting double so much as shall not be so employed, to the queen.

DILATORY PLEAS, are such as are put in merely for delay, and are of three kinds. 1. To the jurisdiction of the court, alleging, that it ought not to hold plea of the matter in hand, as belonging to some other court. 2. To the disability of the plaintiff, by reason whereof he is unable to commence or continue the suit, as that he is outlawed, attainted, an infant, or the like. 3. In abatement, as for some defect in the writ, as a misnomer of the defendant, or other want of form in any material respect. These pleas were formerly used as merely dilatory, without any foundation of truth, and calculated only for delay; but now by Stat. 4 & 5 Anne, c. 16, no dilatory plea shall be admitted, without affidavit made of the truth thereof, or some probable matter shewn to the court to induce them to believe it true. 3 Black, 301. See Abatement.

DIMINUTION, is where the plaintiff or defendant in a writ of error, alleges on an appeal to a superior court, that part of the record is omitted, and remains in the inferior court not certai
fied; whereon he prays that it may be certified by certiorari. Co. Ent. 222. 242.

DISSISSORY LETTERS, are such as are used where a candidate for holy orders, hath a title in one diocese, and is to be ordained in another; the proper diocesan sends his letters dimissory, directed to some other ordaining bishop, giving leave that the bearer may be ordained, and have such a cure within his district.

DIOCESE, the circuit of every bishop's jurisdiction. For this realm hath two sorts of divisions; one into shires or counties, in respect of the temporal state; and another into provinces, in regard to the ecclesiastical state; which provinces are divided into dioceses. The provinces are two; Canterbury, and York, whereof Canterbury includes twenty-one dioceses, or sees of suffragan bishops; and York three, besides the bishopric of the Isle of Man, which was annexed to the province of York by king Henry the Eighth. 1 Inst. 94.

DISABILITY, an incapacity in a man to inherit or take a benefit which otherwise he might have done, which may happen four ways; by the act of the ancestor, by the act of the party, by the act of law, and by the act of God.

1. Disability by the act of the ancestor; as if a man be attainted of treason or felony; by this attainder his blood is corrupt, and himself and his children disabled to inherit. 2. Disability by the act of the party himself; as if one make a feoffment to another who then is sole, upon condition, that he shall enfeoff a third before marriage, and before the feoffment made, the feoffee takes a wife; he hath by that disabled himself to perform the condition according to the trust reposed in him, and therefore, the feoffer may enter, and oust him. Lit. 357. 3. Disability by act of law, is when a man by the sole act of the law is disabled, as an alien born, &c. 4. Disability by the act of God, is where a person is of non-sane memory, and in cases of idiocy, &c. But it is a maxim in our law, that a man of full age, shall never be received to disable his own person. Co. lib. 4. 123. 124. See also Aliens, Dissenters, Idiocy, and Infamy.

DISAGREEMENT, will make a nullity of a thing that had effect before; and disagreement may be to certain acts to make them void, &c. Co. Lit. 380.

DISCHARGE.
DISCHARGE, is where a man confined by some legal process, performs that which the law requires, and is released from the matter for which he is confined. If an obligee, discharge one obligor where several are jointly bound, it discharges the others. See Arrest, Bond, Payment.

DISCLAIMER, is a plea containing an express denial, renouncing or disclaiming; as if the tenant sue a replevin upon a distress taken by the lord, and the lord avow, saying that he holds of him as his lord, and that he distrained for rent not paid, or service not performed; then the tenant denying to hold of such lord, is said to disclaim; and the lord proving the tenant to hold of him the tenant loseth his land. Co. on Lit. 102.

DISCONTINUANCE OF POSSESSION, a man may not enter upon his own lands or tenements alienated (such alienation being a discontinuance of possession), whatsoever his right be to them, of his own self or by his own authority, but must bring his writ, and seek to recover possession by law. Co. Rep. lib. 3. 85:

DISCONTINUANCE OF PROCESS, is where the plaintiff leaves a chasm in the proceedings of his cause, whereby the opportunity of prosecution is lost for that time, in which case he must begin again, and usually pays costs to the defendant; or the plaintiff is dismissed the court, &c. Every suit whether civil or criminal, and every process therein, ought to be properly continued from day to day, &c. from its commencement to its conclusion: and the suffering any default or gap herein, is called a discontinuance. 2 Haw. 298.

DISCONTINUANCE OF PLEA, if where divers things should be pleaded to, and some are omitted; this is a discontinuance. 1 Nels. Abr. 660. 661.

DISCOVER, a woman unmarried, or a widow; one not within the bonds of matrimony.

DISCOVERY, the act of revealing or disclosing any matter by defendant, in his answer to a bill filed against him in a court of equity.

A bill for a discovery, must shew an interest in the plaintiff in the subject, to which the required discovery relates: and such an interest as intitles him to call on the defendant for the discovery. Finch. Rep. 36. 44. 1 Vern, 399.

It is a general rule, that no one is bound to answer so as to
subject himself to punishment, in whatever manner that punishment may arise. 2 Ves. 245. 451. 1 Atk. 450. 2 Atk. 393.

DISCRETION, is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the rule of reason and law. 2 Inst. 56. 298. And the court of king's-bench, hath a power to redress things that are otherwise done, notwithstanding they are left to the discretion of those that do them. 1 Lill. Abr. 477.

DISFRANCHISE, to take away from any one his privilege or freedom. 14 C. H. c. 31.

DISFRANCHISEMENT, is the taking away a man's freedom or privilege. Corporations generally have power by their charter or prescription, to disfanchise a member for doing any thing against the duty of his office as citizen or burgess, and to the prejudice of the public weal of the city or borough, and against his oath, which he took when he was sworn a freeman thereof. But the matter which shall be the cause of his disfanchise, ought to be an act or deed, and not an endeavour or enterprize whereof he may repent, before the execution thereof, and of which no prejudice doth ensue. 11 Co. 98.

DISGUISED PERSONS, not to hunt in park or warren, under severe penalties; prosecutions against them must be within three years, and the trial may be in any county. 9 Geo. I. c. 22. See Black Act.

DISHERITOR, one who disinherits, or puts another out of his inheritance.

DISMES, tithes or the tenth part of the fruits of the earth, and of beasts, or labour, due to the clergy.

DISPAUPER, when any person, on account of poverty, attested by his own oath, of not being worth 5l. his debts being paid, is admitted to sue in forma pauperis, if afterwards, before the suit be ended, he have any lands, or personal estate fallen to him, or that the court, where the suit depends, thinks fit for that or any other reason, to take away that privilege from him, then he is said to be dispaupered, and can no longer sue in forma pauperis.

DISPENSATION, the archbishop of Canterbury has now power of dispensing in any case, wherein dispensations were formerly granted by the see of Rome; and may grant dispensations
to the king, as well as to his subjects; but such dispensations shall not be granted out of the realm, &c. and by 28 H. VIII. c. 16. dispensations to be confirmed under the great seal. Wood's Inst. 26.

**DISPENSATIONS OF THE KING.** The dispensation of the king, &c. makes a thing prohibited, lawful to be done by him who hath it: but malum in se will not admit of a dispensation. March. Rep. 213.

**DISPENSING POWER OF THE CROWN.** If any statute tend to restrain some prerogative incident to the person of the king, as the right of pardoning, or of commanding the service of the subject for the public weal, &c. which are inseparable from the king; by a clause of non obstante, he may dispense with it. 2 Haw. 390. But the pretended power of suspending laws, or the execution of laws, by regal authority, without consent of parliament, is illegal. 1 W. and M. Sess. 2. c. 2.

**DISSEISEIN,** is a wrongful putting out of him that is seized of the freehold, which may be effected either in corporeal inheritances, or incorporeal. Disseisin of things corporeal: as of houses and lands must be by entry and actual dispossession of the freehold. Disseisin of incorporeal hereditaments, cannot be an actual dispossession, for the subject itself, is neither capable of actual bodily possession, or dispossession, but is only at the election and choice of the party injured, if, for the sake of more easily trying the right, he is pleased to suppose himself disseised. And so also even in corporeal hereditaments, a man may frequently suppose himself to be disseised, when he is not so in fact, for the sake of entitling himself to the more easy and commodious remedy of an assise of novel disseisin, instead of being driven to the more tedious process of a writ of entry. 3 Black, 169.

**DISTILLERS,** by stat. 2 G. III. c. 5, s. 12, persons who sell liquors chargeable with duty, and distil spirits, are deemed common distillers, and are liable to surveys, penalties, &c. See Excise.

**DISSENTERS,** before the revolution, many statutes were in force against dissenters, but by 1 W. stat. 1. c. 13, commonly called the toleration act, it is enacted, that none of the acts made against persons dissenting from the church of England, (except the test acts 25 C. II. c. 2. and 30 C. II. st. 2, c. 1.) shall extend to any
any person dissenting from the church of England, who shall at the general sessions of the peace, to be held for the county or place where such person shall live, take the oaths of allegiance and supremacy, and subscribe the declaration against popery, of which the court shall keep a register; and no officer shall take more than 6d. for registering the same, and 6d. for a certificate thereof signed by such officer.

Provided that the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions; and the register or clerk of the peace, shall register on record the same, and provide that during the time of meeting, the doors shall not be locked, barred, or bolted. See Conventicle.

Dissenters chosen to any parochial or ward offices, and scrupling to take the oaths, may execute the office by deputy, who shall comply with the law in this behalf. 1 W. c. 18. But it seems they are not subject to fine, on refusing to serve corporation offices; for they may object to the validity of their election, on the ground of their own nonconformity. 3 Bro. P. C. 465.

DISTRESS, in law, is the taking of a personal chattel, out of the possession of the wrong doer, into the custody of the person who is injured, to procure a satisfaction for the wrong committed. It is of two kinds; cattle for trespassing and doing damage, or for nonpayment of rent or other duties. But the most usual injury for which a distress may be taken, is that of nonpayment of rent.

A distress, may now be taken for any kind of rent in arrear, the detaining of which, beyond the day of payment, is an injury to him that is intitled to receive it. 4 G. II. c. 28. This is the most common and best remedy, for the recovery of rent in arrear; and the effect of it is, to compel the party to repeltry the distress, and contest the taking in an action against the distrainer; or which is more usual, to compound or pay the debt or duty for which he was distressed. 3 Black. 6.

Distress infinite, is a process commanding the sheriff to distress a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due,
due from the party distressed upon. Generally, it is provided that distress shall be reasonable and moderate; but in case of distress for suit of court, or for defect of appearance, in several cases, where this is the only method of enforcing compliance, no distress can be immoderate; because he it of what value it will, it cannot be sold, but shall be immediately restored, on satisfaction made. 3 Black. 231.

Who may distress for rent. By the common law, and the various statutes in favor of this species of remedy for recovery of rent; all persons having the reversion or remainder of lands, &c. after the determination of the particular estate, or existing term therein, may of common right distress for rent in arrear, without any clause for that purpose contained in the lease. Co. Lit. 142.

What may or may not be distrainable. Every thing upon the premises, is liable to the landlord's distress for rent, whether they are the effects of a tenant or a stranger, because of the lien the landlord has on them, in respect of the place where the goods are found, and not in respect of the person to whom they belong. Co. Lit. 47. 3 Bur. 1502. 3 Durnf. and East. 601.

Things not distrainable, are tools of a man's trade, corn sent to a mill, a horse sent to a smith's shop, or in a common inn, cloth at a tailor's, goods in the hands of a carrier. 1 Salk. 249. 1 Esp. Rep. 206. 4 T. R. 569. Dogs, rabbits, beasts of the plough, milk, fruit, and things fixed to the freehold. 3 Black, 8 and 9. 4 T. R. 569. But beasts of the plough, and working tools, if not actually in use at the time, may be distrainable, if there be not sufficient without them. 4 T. R. 569. So may wearing apparel not actually in use. 1 Esp. Rep. 206. Money in a bag sealed, may be distrainable.

Horses and carriages sent to stand at livery, are distrainable by the landlord. 3 Bur. 1498.

Of the time, &c. and manner of taking the distress. Distress for rent must be in the day-time, for if made at night it will be bad. Co. Lit. 142.

Strictly, the rent is demandable, and payable, before the time of sun-set, of the day whereon it is reserved. Yet the rent is not due, till the last minute of the natural day. 2 Black. 42.

Distress cannot be made therefore, till the day after that, on which
which the rent is reserved in the lease: for though payable, it is
not strictly due till midnight of the day upon which it is reserved.

Distress cannot be made after the rent has been tendered: if
the landlord come to distraint, the tenant may, before the distress
made, tender the arrears; and if the distress be afterwards taken
it is illegal; and so if alter the distress, and before it is impound-
ed, the tenant tender payment, the landlord ought to deliver up
the distress; and if he do not the detainer is unlawful. 2 Inst.
107.

Parole authority to distraint is sufficient, or any authority that can
be proved.

By 2 G. II. c. 19. landlords may by the assistance of a peace
officer of the parish, break open in the day-time, any place where
goods are fraudulently removed and locked up to prevent a distress,
oath being first made in case it be a dwelling-house, of a reasona-
ble ground to suspect that such goods are concealed therein.

By stat. 8 Anne, c. 14. rent accruing due under a lease, must be
distrained for, within six months after its determination.

If a tenant fraudulently remove goods off the premises, the
landlord may seize them within thirty days. But such seizure can
only be made, where the rent was actually due before the re-
moval.

If a landlord seize only a part of the goods, &c. of his tenant for
rent, in the name of them all, it will be a good seizure of the
whole. 6 Mod. 215.

Distresses ought not to be excessive, but in proportion to the du-
ty distrained for. 2 Inst. 106.

The remedy for excessive distresses, is, by a special action on the
stat. of Mulbridge, for an action of trespass is not maintainable
upon this account, it being no injury at common law. 1 Vent.
104. Fitzgib. 85. 4 Bur. 590.

Where any distress shall be made for rent justly due, and any
irregularity or unlawful act shall be afterwards committed by the
party distraining, or his agents; the distress itself shall not on that
account be deemed unlawful, nor the party a trespasser from the
first, but the person aggrieved shall recover full satisfaction for
the special damage sustained by such irregularity, and no more,
with full costs of suit. 4 G. II. c. 19.
How a distress is to be disposed of. Persons distraining for rent, may impound the distress on any convenient part of the land, chargeable with the distress, otherwise the goods must be removed to a pound covert, and notice given where they are, unless the tenant consent to a person remaining in possession on the premises. Wood's Inst. 191.

All living chattels distrained, are regularly to be put in the pound covert, because the owner at his peril, is to sustain them, and therefore they ought to be put in such an open place, as that he may have resort to them for that purpose. Co. Lit. 47, b.

Household goods, and such other things as would be damaged by the weather, must be impounded in the pound covert, otherwise if they be damaged, the distrainer will be answerable for the loss. 1 Inst. 47.

If the distress for rent, die, or be damaged in the pound, without any default of the distrainer, he may make a fresh distress. 1 Inst. 249.

By 2 W. and M. it is provided, that where any goods or chattels, shall be distrained for rent due on any demise, lease, or contract whatsoever, and the owner shall not, within five days next after such distress taken and notice thereof, and of the cause of the the taking left at the dwelling house, or other most notorious place on the premises charged with the rent, replevy the same, that then at the expiration of the said five days, the distrainer may with the assistance of the sheriff, undersheriff, or constable; cause the goods and chattels so distrained to be appraised by two sworn appraisers, and sold for the best price that can be got for the same, towards satisfaction of the rent for which the said goods and chattels have been distrained; and the costs and charges of such distress, appraisement, and sale, leaving the overplus, if any, in the hands of the said sheriff, or constable, for the use of the owner.

By stat. 2 W. c. 5, on any pound-breacg or rescous, of goods distrained for rent, the person grieved thereby, shall in a special action on the case, recover treble damages and costs against the offender, or against the owner of the goods, if they are afterwards found to have come to his use or possession.

DISTRESS FOR PENALTIES, by 27 G. II. c. 20. s. 1. In all cases where any justice of the peace shall be required or empowered
powered by any act of parliament, to issue a warrant of distress for the levying any penalty inflicted, or any sum of money directed to be paid by such act; it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty, or sum of money for which the distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

DISTRESS OF THE KING, by the common law, no subject can distrain out of his fee or seigniory, unless cattle are driven to a place out of the fee, to hinder the lord's distress, &c. But the king may distrain for rent service, or fee farm, in all the lands of the tenant, wheresoever they be; not only on lands held of himself, but others, where his tenant is in actual possession, and the land manured with his own beasts. 2 Inst. 132.

DISTRIBUTION OF INTESTATE'S EFFECTS, after payment of the debts of the deceased, is to be made according to the stat. 22 and 23 C. II. c. 10, in manner following: one third shall go to the widow of the intestate, and the residue in equal proportions to his children; or if dead to their representatives; that is, their lineal descendants: if there be no children, or legal representatives, then a moiety shall go to the widow, and a moiety to the next kindred in equal degree, or their representatives: if no widow, the whole shall go to the children: if neither widow nor child, the whole shall be distributed amongst the next kindred in equal degree and their representatives; but no representatives are admitted among collaterals, farther than the children of the intestate's brothers and sisters. The father succeeds to the whole personal effects of his children, if they die intestate, and without issue; but if the father be dead, and the mother survive, she shall only come in for a share equally with each of the remaining children.

DISTRICT, a territory or place of jurisdiction. See Circuit.

DISTRINGAS, is a writ directed to the sheriff, commanding him to distrain one by his goods and chattels, to enforce his compliance with what is required of him.

Distringas is also issued against peers and persons entitled to
privilege of parliament, by which the effects levied, may be sold to pay the plaintiff's costs. 10 G. III. c. 50.

DISTRIBUTING JURATOES, a writ directed to the sheriff, to detain upon a jury to appear; and return issues on their lands &c. for nonappearance.

DIVIDEND IN THE EXCHEQUER, one part of an indenture. 10 Ed. I. c. 11.

DIVIDEND OF BANKRUPTS. See Bankrupts.

DIVIDEND IN STOCKS, a dividable proportionate share of the interest of stocks, erected on the public funds.

DIVORCE, a separation of two de facto married together; of which there are two kinds; one a vinculo matrimonii, from the very bond of marriage; the other a mensa et thora from bed and board.

Causes for separation a vinculo, are consanguinity or affinity within the degrees prohibited, also impuberty or frigidity; where the marriage was merely void ab initio, and the sentence of divorce only declaratory of its being so:

This divorce enables the parties to marry again: but in the other case a power for so doing must be obtained by act of parliament.

The woman divorced a vinculo matrimonii, receives all again she brought with her.

Divorce a mensa et thora, is where the use of matrimony, as the use of cohabitation of the married persons, on their mutual conversation, is prohibited for a time, or without limitation of time. And this is in cases of adultery, cruelty, or the like; in which case the marriage having been originally good, is not dissolved or affected as to the vinculum or bond.

The woman under separation by this divorce, may sue by her next friend; and she may sue her husband in her own name for alimony. Wood's Inst. 62.

But the children which she hath after the divorce, shall be deemed bastards; for a due obedience to the sentence will be intended, unless the contrary be shewn. Walk. 123.

DOCKET or DOGGET, a brief in writing, on a small piece of paper or parchment, containing the effect of a larger writing, and annexed to other papers for particular purposes. In law a docket is necessary in all judgments, and no debts will be entitled to a preference in debts, due from a party deceased, as judgment debts, unless such judgments be regularly docketed.
DOCTORS and bachelors of divinity and law, may have a dispensation for nonresidence. 21 H. VIII. c. 13. Doctors of civil law, may exercise ecclesiastical jurisdiction, although laymen. 37 H. VIII. c. 17.

DOCTORS COMMONS, is the college of civilians in London.

DOGS. The owner of a dog is bound to muzzle him, if mischievous, but not otherwise; and if a man keep a dog that is known to bite cattle, &c. if, after notice given to him of it, his dog shall do any hurt, the master shall answer for it.

The duty on dogs. The act of 36 G. III. contains the following provisions:

1. That the duty shall not extend to dogs not six months old, the proof of which is to lie on the owner, on an appeal to the commissioners.

2. If any person shall be desirous of compounding for the number of hounds by him kept, and shall give notice thereof to the collector, and shall pay within thirty days after April 5, yearly, the sum of 30l. such person shall not be liable to be assessed in respect of any hounds by him kept in the preceding year; and if they are kept in two or more parishes, he shall give notice in which parish, such composition is intended to be made.

By 42 G. III. c. 17, any person keeping two or more dogs, shall pay annually for every greyhound, pointer, setting dog, spaniel, lurcher, or terrier, and for every dog of whatsoever description, or denomination the same may be, the sum of 10s.

And for any dog (not being a greyhound, hound, setting dog, spaniel, lurcher, or terrier), kept by or for the use of any person inhabiting a dwelling house assessed to any of the duties, on houses, windows, or lights, where one such dog and no more shall be kept by or for the use of such person, the annual sum of 6s.

DOMESDAY, is a very ancient record, made in William the Conqueror's time, and now remaining in the exchequer fair and legible, consisting of two volumes, containing a survey of all the lands in England. It was begun by five justices, assigned for that purpose in each county, in the year 1081, and finished in 1086.

It is generally known, that the question whether lands are ancient demesne or not, is to be decided by the Domesday book of William.
William the Conqueror; from whence there is no appeal. And it is a book of that authority, that even the conqueror himself submitted in some cases, wherein he was concerned, to be determined by it.

DOMICELLUS, signifies a young soldier not yet knighted, and was anciently given as an appellation or addition to the king's natural sons in France, and sometimes to the eldest sons of noblemen there.

DOMINA, a title given to those honourable women, who in the right of inheritance held a barony.

DOMINUS, a title given to a knight, or a man of quality, the lord of a manor, or to a clergyman.

DOMO REPARANDA, a writ for one against his neighbour, by the fall of whose house he apprehends injury to his own.

DONATIO CAUSA MORTIS, a gift in prospect of death; where a person moved with the consideration of his mortality, gives, and delivers, something to another to keep in case of his decease, but if he live he is to have it again. Law of Test. 179.

DONATIVE, is a spiritual preferment, be it church, chapel, or vicarage, which is in the free gift or collation of a patron, without making any presentation to the bishop; and without admission, institution, or induction, by any mandate from the bishop or other; but the donee may by the patron, or by any other authorized by the patron, be put into possession. Deg. Pars. Conn. 1. c. 13. See Advowson.

DONOR AND DONEE, Donor is one who gives lands or tenements to another; and he to whom the same is given is the donee.

DOTE ASSIGNANDA, is a writ that lay for a widow, where it was found by office, that the king's tenant was seized of tenements in fee or fee-tail at the day of his death; and that he held of the king in chief, &c. In which case the widow came into the chancery, and there made oath, that she would not marry without the king's leave; and hereupon, she had this writ to the escheator. 15 Ed. III. c. 4.

DOTE UNDE NIHIL HABET, a writ of dower that lies for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was seized solely in fee-simple or fee-tail,
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in such sort, as the issue of them both might have inherited it. E. N. B. 147.

DOUBLE PLEA, is that, wherein the defendant alledged for himself two several matters in bar of the plaintiff's action, whereof either is sufficient to effect his desire, which shall not be admitted for a plea.

DOUBLE QUARREL, is a complaint made by any clerk, or other to the archbishop of the province against an inferior ordinary, for delaying justice in any cause ecclesiastical; as to give sentence, to institute a clerk presented, or the like: the effect whereof is, that the archbishop taking notice of such delay, directs his letters under his authentic seal, to all and singular clerks of his province, thereby commanding and authorizing them, and every of them to admonish the said ordinary, within a certain time; nine days, to do the justice required, or otherwise to cite them to appear before him the said archbishop, or his official, at a day in the said letters prefixed, and there to allege the cause of his delay. And lastly, to intimate to the said ordinary, that, if he neither perform the thing enjoined, nor appear at the day signed, he himself will without delay proceed to perform the justice required; and this seems to be termed a double quarrel, because it is most commonly made both against the judge and him at whose petition justice is delayed. Clark's Prax. Tit. 84. 5.

DOUBLES, nearly the same as letters patent. Stat. 14 H. VI. c. 6.

DOWAGER, a widow endowed, or that hath a jointure; also a title or addition, applied to the widows of princes, dukes, earls, and persons of honour only.

DOWAGER QUEEN, is the widow of the king, and as such enjoys most of the privileges belonging to her as queen consort. But it is not high treason to conspire her death, or violate her chastity; because the succession to the crown is not thereby endangered. But no man can marry her without special licence from the king, on pain of forfeiting his lands and goods. 1 Black, 223.

DOWER, the portion which a widow hath of the lands of her husband, after his decease, for the sustenance of herself, and the education of her children,
To the consummation of dower, three things are necessary, viz. marriage, seisin, and the husband's death.

There were formerly five kinds of dower in this kingdom, viz.
1. Dower by the common law. 2. Dower by custom. 3. Dower ad ostium ecclesiae. 4. Dower ex assensu patris, and 5. Dower de la plus belle. But of all these kinds of dower, only the two first are now in use.

Dower by the common law, is a third part of such lands or tenements whereof the husband was sole seized in fee-simple, or fee-tail, during the marriage, which the wife is to enjoy during her life; for which there lies a writ of dower. See Distribution of Intestate's Effects.

Dower by Custom. This kind of dower varies according to the custom and usage of the place, and is to be governed accordingly; and where such custom prevails, the wife cannot wave the provision thereby made for her, and claim her thirds at common law, because all customs are equally ancient with the common law itself. Co. Lit. 39 b.

Dower ad ostium ecclesiae, is where a man of full age, seized of lands in fee, after marriage, endows his wife at the church door of a moiety, a third, or other part of his lands, declaring them in certainty; in which case, after her husband's death, she may enter into such lands without any other assignment, because the solemn assignment at the church door, is equivalent to the assignment in pais by metes and bounds; but this assignment cannot be made before marriage, because before, she is not entitled to dower. Lit. Sect. 39.

Dower ex assensu patris, is where the father is seized of lands in fee; and his son and heir apparent after marriage endows his wife by his father's assent, ad ostium ecclesiae, of a certain quantity of them; in which case after the death of the son, his wife may enter into such parcel without any other assignment, though the father be living; but this assent of the father's must be by deed, because his estate is to be charged in futuro, and this may likewise be of more than a third part. Co. Lit. 35, 36.

The dowers ad ostium ecclesiae, or ex assensu patris, if the wife enter and assent to them, are a good bar of her in common law; but she may if she will, wave them, and claim her dower at common law.
mon law, because being made after marriage, she is not bound by them. Br. 97.

Dower de la plus belle, is, where there is a guardian in chivalry, and the wife occupies lands of the heir as guardian in soccage; if the wife bring a writ of dower against such guardian in chivalry, he may shew this matter, and pray that the wife may be endowed de la plus belle of the tenements in soccage; and it will be adjudged accordingly; and the reason of this endowment, was to prevent the dismembering of the lands holden in chivalry, which are pro bono publico, and for the defence of the realm. Lit. Sect. 48.

After judgment given, the wife may take her neighbours, and in their presence endow herself of the plus belle, or fairest part of the tenements, which she hath in soccage, for her life. Lit. Sect. 48.

DOWRY, in ancient time applied to that which the wife brings her husband in marriage; otherwise called maritagium, or marriage goods: but these are termed more properly, goods given in marriage, and the marriage portion. 1 Inst. 31.

DOZEIN, one of the articles for stewards in their leets to enquire of, is, if all the dozeins (or deciners) be in the assize of our lord the king, and which not, and who receive them. See Deciners.

DRAWLATCHES, thieves and robbers, they are mentioned in stat. 5, Ed. III. c. 14.

DREIT DREIT or DROIT DROIT, signifies a double right, that is, jus possessonis et jus domini. Bract. Lib. 4. c. 27.

DRIFT OF THE FOREST, a view or examination of what cattle are in the forest, that it may be known whether it be overcharged, or not, and whose the beasts are; and whether they are commonable beasts, &c. 4 Inst. 309.

DROFLAND or DRYFLAND, an ancient quit rent, or yearly payment made by some tenants to the king, or their landlords, for driving their cattle through the manor to fair, or markets. Cowel.

DROIT, right, it is the highest of all real writs whatsoever, and has the greatest respect, and the most assured and final judgment; and therefore is called a writ of right, and in the old books droit.
There are divers of these writs used in our law, as *droit de advowson*, *droit de gard*, *droit patent*, *droit rationabi*, *droit sur disclaimer*, &c.

**DRUNKENNESS**, excuses no crime; but he who is guilty of any crime whatever, through his voluntary drunkenness, shall be punished for it as much as if he had been sober; for the law, seeing how easy it is to counterfeit this excuse, and how weak an excuse it is (though real), will not suffer any man thus to privilege one crime by another. 4 Black. 26.

By several statutes temp. Jae. every person convicted of drunkenness shall forfeit 5s. or be committed to the stocks for six hours, and offending a second time, shall be bound in a recognizance of 10l. for future good behaviour. And an alehouse-keeper, convicted of drunkenness, shall besides the other penalties, be disabled to keep any such alehouse for three years.

**DUCES TECUM**, is a writ out of chancery, commanding a person to appear at a certain day in court, and *bring with him* some writings, evidences, or other things, to be inspected and examined in court.

**DUELLING**, or single combat, between any of the king’s subjects, of their own heads, and for private malice or displeasure, is prohibited by the laws of this realm; for in a settled state governed by law, no man, for any injury whatever ought to use private revenge. 3 Inst. 157.

And where one party kills the other, it comes within the notion of murder, as being committed by malice afore thought; where the parties meet with an intent to murder, thinking it their duty as gentlemen, and claiming it as their right, to wanton with their own lives, and the lives of others, without any warrant for it either human, or divine; and therefore the law hath justly fixed on them the crime and punishment of murder. 4 Black. 199.

And the law so far abhors all duelling in cold blood, that not only the principal, who actually kills the other, but also his seconds, are guilty of murder whether they fought or not; and it is helden that the seconds of the party slain, are likewise guilty as accessories. 12 Haw. 8.

**DUKE**, in *England*, duke is the next secular dignity to the Prince of Wales.
DUM FUIT INFRA ÆTATEM, a writ that lies for him, that before he came to his full age, made a feoffment of his land in fee, or for term of life, or in tail, to recover them again from him, to whom he conveyed them.

DUM NON FUIT COMPOSITUM, a writ that lies against the alienee, or lessee, for him that not being of sound memory, aliened any lands or tenements in fee-simple, fee-tail, or for term of life, or for years.

DURESS, is where a man is kept in prison, or restrained of his liberty, contrary to the order of law, or threatened to be killed, maimed, or beaten; and if such person so in prison, or in fear of such threats, make any specialty or obligation by reason thereof, such deed is void in law; and in any action brought upon such specialty, the party may plead, that it was made by duress, and so he may avoid the action. Cowel.

Every legal contract must be the act of the understanding, which they are incapable of using, who are under restraint and terrors; and therefore the law requires the free assent of the parties as essential to every contract, and that they be not under any force or violence. 2 Buc. Abr. 135.

DURHAM. See Counties Palatine.

DUTCHY COURT, a court wherein all matters appertaining to the dutchy or county palatine of Lancaster, are decided by the decree of the chancellor of that court. See Counties Palatine.

DUTIES, sums payable on importing, exporting, or manufacturing an article as a tax. The word is most generally applied to taxes on exports and imports.

There are also various assessed duties on private property, both real and funded, on carriages, horses, houses, windows, &c. &c. which on account of the political changes daily occurring, cannot with propriety be entered into, in this book.

DYERS, by Stat. 3 & 4 Ed. VI. c. 2. no dyer may dye any cloth with orcheb, or with brazil, to make a false colour in cloth, wool, &c. on penalty of 20s. By Stat. 23 Eliz. c. 9. dyers are to fix a seal of lead to cloths, with the letter M, to shew that they are well mathered, &c. or forfeit 3s. 4d. per yard. By Stat. 23 Geo. III. c. 15. several penalties are inflicted on dyers who dye any cloths deceitfully, and not woaded throughout with indigo and mather. Dying blue with logwood to forfeit 20l. Dyers
in London, are subject to the inspection of the dyers company, who may appoint searchers; and out of their limits, justices of the peace in sessions are to appoint them. Opposing the searchers incurs a penalty of 10l.

EALDERMAN, a man chosen to a place of superiority, on account of his age and experience: hence the word alderman in corporations. See Alderman.

EARLE, a great title, and is the most ancient of any of the peerage; and, anciently, there was no earl, but who had a shire or county for his earldom. But of later times the number of earls greatly increasing, they have sometimes for their title some particular part of a county, town, village, or place of residence. Their place is next to a marquis, and before a viscount. See Selden's Titles of Honour. 676.

EARNEST, is the money advanced to bind the parties to the performance of a verbal agreement. The person who gives it, is in strictness obliged to abide by his bargain; and in case he declines, is not discharged upon forfeiting his earnest, but may be sued for the whole money stipulated, and damages; and by the statute of frauds 29 C. II. c. 3. no contract for sale of goods to the value of 10l. or more, to be valid, unless such earnest is given.

EASEMENT, a service or convenience, which one neighbour has of another by charter, or prescription, without profit; as a way through his ground, a sink, or the like.

EAST-INDIA COMPANY, a corporation, or united company of merchants of England trading to the East-Indies; which name is given them in Stat. 6 Anne, c. 17. s. 13. more explicitly, according to their charter and adjustment of their rights, by stat. 9 & 10 W. III. c. 44. s. 61. trading into and from the East-Indies, in the countries and ports of Asia and Africa, and into and from the islands, ports, havens, cities, creeks, towns, and places of Asia, Africa, and America, or any of them, beyond the Cape of Good
Good Hope, to the straights of Magellan, where any trade or traffic of merchandize is or may be used and had, to and from every of them.

The temporary rights of the company consist of 1st. the sole and exclusive trade with India, and other parts within the limits already described; so that no other of the king's subjects can go thither, or trade there, but by permission of the company; or pursuant to the directions of stat. 33 Geo. III. c. 52. 2dly. They have the administration of the government and revenues of the territories in India, acquired by their conquests during their term in the exclusive trade; subject nevertheless to the various checks and restrictions contained in the several statutes, which vest that administration in them.

The rights in perpetuity, are to be a body corporate and politic, with perpetual succession; to purchase, acquire, and dispose at will of lands and tenements in Great Britain, so that the value therein do not exceed 10,000l. per annum; to make settlements to any extent, within the limits of their exclusive trade; build forts and fortifications; appoint governors; erect courts of judicature; coin money; raise, train, and muster forces at sea and land; repel wrongs and injuries; make reprisals on the invaders or disturbers of their peace; and continue to trade within the said limits, with a joint stock for ever, although their exclusive right of trading shall be determined by parliament.

The only privileges they can be constitutionally deprived of, are those of trading to the exclusion of others, and of governing the countries, and collecting and appropriating the revenues of India. For further particulars concerning the East-India Company, see Stat. 9 & 10 W. c. 44. s. 69. 6 Anne, c. 3. 7 Geo. I. c. 5. 25 Geo. II. c. 26. 7 Geo. III. c. 47. 12 Geo. III. c. 54. 13 Geo. III. c. 63. 17 Geo. III. c. 8. 21 Geo. III. c. 70. 24 Geo. III. c. 25. and 33 Geo. III. c. 52.

EASTLAND TRADE, all the king's subjects may use the Eastland trade, or be admitted a free member of the company, for which purpose it is only necessary to pay 40s.

ECCLESIA, is generally used for the place where the Almighty is worshipped; a church.

ECCLESIASTICAL COURTS. See Courts; Ecclesiastical.
ECCLESIASTICAL JURISDICTION, the doctors of the civil law, although laymen may exercise ecclesiastical jurisdiction. 37 H. VIII. c. 17.

EGYPTIANS (Gipsies), are a kind of commonwealth among themselves of wandering impostures and jugglers, who made their first appearance in Germany, about the beginning of the sixteenth century, and have since spread themselves over all Europe and Asia. By the laws of England, gipsies were formerly subject to imprisonment and forfeiture of goods, but they are now considered chiefly as rogues and vagabonds, and are described as such in the vagrant act. 4 Black. 166.

EJECTIOE: CUSTODIÆ, a writ which lies against him, who casts out the guardian from any land during the minority of the heir.

EJECTMENT, an ejectment is a mixed action, by which a lessee for years, when ousted, may recover his term and damages; it is real in respect of the lands, but personal in respect of the damages. Since the disuse of real action, this mixed proceeding is become the common method of trying the title to lands or tenements. Runnilltton on Ejectments.

The modern method of proceeding in ejectment, entirely depends on a string of legal fictions; no actual lease is made; no actual entry by the plaintiff; no actual ouster by the defendant; but all are merely ideal for the sole purpose of trying the title. To this end, a lease for a term of years is stated in the proceedings, to have been made by him who claims title to the plaintiff, who is generally an ideal fictitious person, who has no existence; though it ought to be a real person to answer for the defendant’s costs. In this proceeding, which is the declaration; (for there is no other process in this action) it is also stated, that the lessee, in consequence of the demise to him made, entered into the premises; and that the defendant who is also now another ideal fictitious person, and who is called the casual ejector, afterwards entered thereon and ousted the plaintiff; for which ouster the plaintiff brings this action. Under this declaration is written a notice, supposed to be written by this casual ejector, directed to the tenant in possession of the premises; in which notice the casual ejector informs the tenant, of the action brought by the lessee, and assures him, that as he the casual ejector, has no title at all to the premises.
premises, he shall make no defence, and therefore, he advises
the tenant to appear in court, at a certain time and defend his
own title, otherwise he the casual-ejector, will suffer judgment to
be had against him, by which the actual tenant will inevitably be
turned out of possession. 2 Comr. Prac. 132.

The ancient way of proceeding, was by actually sealing a lease
on the premises, by the party in interest who was to try the titles;
and this method is still in use in the following cases:

First, where the house or thing for which ejectment is brought
is empty.

Secondly, when a corporation is lessor of the plaintiff, they
must give a letter of attorney to some person to enter and seal a
lease on the land; for a corporation cannot make an attorney or a
bailiff except by deed, nor can they appear but by making a pro-
per person their attorney by deed; therefore they cannot enter and
demise upon the land as natural persons can. L. Raym. 135.

Thirdly, when the several interests of the lessor of the plaintiff
are not known, for in that case, it is proper to seal a lease on the
premises; lest they should fail in setting out in their declaration,
the several interest which each man passes.

Fourthly, where the proceedings are in an inferior court, they
must proceed by actually sealing a lease, because they cannot
make rules confess lease, entry, and ouster, inasmuch as inferior
courts have not authority to imprison for disobedience to their
rules.

It is a general rule, that no person can in any case, bring an
ejectment, unless he have in himself at the time, a right of entry;
for although by the modern practice, the defendant is obliged by
rule of court, to confess lease, entry, and ouster; yet that rule
was only designed to expedite the trial of the plaintiff's right, and
not to give him a right which he had not before; and therefore,
when it happens that the person claiming title to the lands, has
no right of entry, he cannot maintain his action. 3 Black. 206.

The damages recovered in these actions, though formerly their
only intent, are now usually (since the title has been considered
as the principal question) very small and inadequate, amounting
commonly to one shilling, or some other trivial sum. In order
to complete the remedy, when the possession has been
long detained from him that has right, an action of trespass also
lies,
lies, after a recovery in ejectment, to recover the mesne profits which the tenant in possession had wrongfully received; which action may be brought in the name of either the nominal plaintiff in the ejectment, or his lessor, against the tenant in possession, whether he be made party to the ejectment, or suffer judgment to go by default.

EIGNE, the eldest, or first born.

EIRE or EYRE, signifies the court of justice itinerant. Eyer is also taken to signify the justice seat. See Justices in Eyre.

ELECTION, is where a person has by law two remedies, and is compelled to declare which he will abide by: Thus a creditor, in cases of bankruptcy, may either prove his debt under the commission, or proceed at law; but in this case he is compelled to make his election. Where also a person having obtained a judgment, and is entitled to execution, he may either take his remedy against the goods or the person, and he may choose either; but if he proved against the person in the first instance, he cannot afterwards have recourse to the goods; but if he take the goods, and these should be found inadequate to his demand, he may afterwards take the livery.

ELECTION OF BISHOPS. See Bishops.

ELECTION OF A CLERK OF STATUTES MERCHANT, a writ that lies for the choice of a clerk assigned to take and make bonds, called statutes merchant, and is granted out of the chancery upon suggestion made, that the clerk formerly assigned is gone to dwell in another place, or is hindered from following that business, or hath not land sufficient to answer his transgression if he should deal amiss. F. N. B. 164.

ELECTION OF ECCLESIASTICAL PERSONS. If any person that hath a voice in elections, take any reward for an election in any church, college, school, &c. such election shall be void: and if any such societies resign their places to others for reward, they incur a forfeiture of double the sum: and the party giving, and the party taking it, are thereby rendered incapable of such place. 31 Eliz. c. 6. See Bishops.

ELECTION OF MEMBERS OF PARLIAMENT. Qualification of the candidates. No member shall sit or vote in either house of parliament, unless he be twenty-one years of age.
They must not be aliens born: they must not be any of the twelve judges; because they sit in the Lord's house. But persons who have judicial places in the other courts, ecclesiastical or civil, are eligible. 4 Inst. 47. Nor of the clergy; the reason assigned for which, is, that they might sit in the convocation. Nor persons attainted of treason or felony, for they are unfit to sit anywhere. Id.

By the 80 C. II. st. 2. c. 1. and 1 Geo. I. c. 13. in order to prevent papists from sitting in either house of parliament, no person shall sit or vote in either, till he hath in the presence of the house, taken the oaths of allegiance, supremacy, and abjuration, &c.

Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers; but a sheriff of one county may be chosen knight of another. 1 Black. 175.

By several statutes, no persons concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury; nor any of the officers following, viz. commissioners of prizes, transports, sick and wounded, wine licences, navy and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licences, hackney-coaches, hawkers and pedlars; nor any persons that hold any new office under the crown, created since 1705, are capable of being elected. 1 Black. 175.

But this shall not extend to, or exclude the treasurer or comptroller of the navy, secretaries of the treasury, secretary to the chancellor of the exchequer, secretaries of the admiralty, under secretary of state, deputy paymaster of the army, or any person holding any office for life, or so long as he shall behave himself well in his office. 15 Geo. II. c. 22.

By the 6 Anne, c. 7. s. 26. if any member shall accept an office of profit under the crown, except an officer of the army or navy accepting a new commission, his election shall be void: but he shall be capable of being re-elected.
No person having a pension from the crown during pleasure, shall be capable of being elected. 6 Anne, c. 7. s. 25.

By the 22 Geo. III. c. 45. no contractor with the officers of government, or with any other person for the service of the public, shall be capable of being elected, or of sitting in the house, as long as he holds any such contract, or derives any benefit from it. But this does not extend to contracts with corporations, or with companies, which then consisted of ten partners; or to any person to whom the interest of such a contract shall accrue by marriage or operation of law, for the first twelve months. And if any person disqualified by such a contract shall sit in the house, he shall forfeit 500l. for every day; and if any person who engages in a contract with government, admit any member of parliament to a share of it, he shall forfeit 500l. to the prosecutor.

No person shall be capable to sit or vote in the house of commons, for a county, unless he have an estate freehold or copyhold, for his life, or some greater estate, of the clear yearly value of 600l. nor for a city or borough, unless he have a like estate of 300l. and any other candidate, or two electors, may require him to make oath thereof at the time of election, or before the day of the meeting of parliament; and before he shall vote in the house of commons, he shall deliver in an account of his qualification, and the value thereof under his hand, and make oath of the truth of the same. But this shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as knight of a shire, nor to the members of either of the two universities. 9 Anne, c. 5. 33 Geo. II. c. 20.

Qualifications of Electors. No person shall be admitted to vote, under the age of twenty-one years. This extends to all sorts of members, as well for boroughs as counties. 7 & 8 W. c. 25.

Every elector of a knight of a shire, shall have freehold to the value of 40s. a year within the county; which is to be clear of all charges and deductions, except parliamentary and parochial taxes. 1 Black. 172.

No person shall vote in right of any freehold, granted to have fraudulently, to qualify him to vote, and every person who shall prepare or execute such conveyance, or shall give his vote under it, shall forfeit 40l. 10 Anne, c. 25.
No person shall vote for a knight of the shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents or profits thereof to his own use, above twelve calendar months; unless it come to him by descent, marriage, marriage-settlement, devise, or promotion to a benefice or office. 43 Geo. II. c. 1.

No person convicted of perjury, shall be capable of voting at an election.

No person shall vote in respect of an annuity or rent-charge, unless registered with the clerk of the peace twelve calendar months before. Such annuity or rent-charge issuing out of a freehold estate.

No person shall vote for a knight of a shire, in respect of any messuages, lands, or tenements, which have not been charged to the land-tax, six calendar months before. 20 Geo. III. c. 17.

No person shall vote, for any estate holden by copy of court roll. 31 Geo. II. c. 14.

In mortgaged, or trust-estates, the mortgagor, cestuy que trust, shall vote, and not the trustee or mortgagee unless they be in actual possession.

All conveyances to multiply voices, or to split votes, shall be void; and no more than one voice shall be admitted for one and the same house or tenement.

The right of election in boroughs is various, depending entirely on the several charters, customs, and constitutions of the respective places; but by 2 Geo. II. c. 24, this right of voting, for the future shall be allowed according to the last determination of the house of commons concerning it.

And no person, claiming to vote in right of his being a freeman of a corporation (other than such as claim by birth, marriage, or servitude), shall be allowed, unless he have been admitted to his freedom, twelve calendar months before. 3 Geo. III. c. 15.

Of election, as it is essential to the very being of parliaments that election should be absolutely free, all undue influence whatever upon the electors, is illegal, and strongly prohibited. As soon, therefore, as the time and place of election within counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll be
be ended; except in the liberty of Westminster, or other residence of the royal family, in respect of his majesty’s guards, and in fortified places. 8 Geo. II. c. 30.

By the 7 & 8 W. c. 4. to prevent bribery and corruption, no candidate, after test of the writ of summons, or after a place becomes vacant in parliament time, shall, by himself, or by any other ways or means on his behalf, or at his charge, before his election, directly, or indirectly, give, or promise to give, to any elector any money, meat, drink, provision, present, reward, or entertainment, to or for any such elector in particular; or to any county, city, town, borough, port, or place in general, in order to his being elected, on pain of being incapacitated.

To guard still more against gross and flagrant acts of bribery, it is enacted by 2 Geo. II. c. 24. explained and enlarged by 9 Geo. II. c. 38. and 16 Geo. III. c. 11. that if any money, gift, office, employment, or reward, be given, or promised to be given, to any voter, at any time in order to influence him, to give or withhold his vote, as well he that takes, as he that offers such a bribe, forfeits 500l. and is for ever disabled from voting and holding any office in any corporation; unless before conviction, he will discover some other offender of the same kind, and then he is indemnified for his own offence.

If the election shall not be determined upon view, with the consent of the freeholders there present, but a poll shall be demanded, the same shall commence on the day on which such demand is made, or on the next day at farthest (if it be not Sunday, and then on the day after), and shall be proceeded in from day to day (Sundays excepted) until it be finished, and shall not continue more than fifteen days (Sundays excepted); and the poll shall be kept open seven hours at least each day, between eight in the morning and eight in the evening. 25 Geo. III. c. 34. The sheriff shall allow a cheque-book for every poll-book for each candidate, to be kept by their inspectors at the place of taking the poll. 19 Geo. II. c. 28.

By the 34 Geo. III. c. 73. in order to expedite the business at elections, the returning officers are enabled, on request of the candidates, to appoint persons to administer to voters, the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration,
abjuration, and the declaration or affirmation of the effect thereof, previously to their coming to vote; and to grant the voters certificates of their having taken the said oath; without which certificate, they shall not be permitted to vote, if they are required to take the oaths.

And every freeholder, before he shall be admitted to poll for a knight of the shire, shall, if required by a candidate, or any elector, make oath of his qualification to vote; in which case the sheriff and clerks shall enter the place of his freehold, and the place of his abode, as he shall disclose the same at the time of giving his vote; and shall enter jurat against the name of every such voter who shall have taken the oath. 10 Anne, c. 23. s. 5.

Of the return. After the election, the names of the persons chosen shall be written in an indenture, under the seals of the electors, and tacked to the writ.

The election being closed, the returning officer in boroughs, returns his precept to the sheriff, with the persons elected by the majority. And the sheriff returns the whole, together with the writ for the county, and the names of the knights elected thereupon, to the clerk of the crown in chancery, before the day of meeting if it be a new parliament; or within fourteen days after the election, if it be an occasional vacancy; and this under the penalty of 500l. If the sheriff do not return such knights only as are duly elected, he forfeits by stat. H. VI. 100l. and the returning officer of a borough, for a like false return 40l. and by the late statutes they are liable to an action at the suit of the party duly elected, and to pay double damages, and the like remedy shall be against an officer making a double return. 1 Black. 180.

If two or more sets of electors make each a return of a different member (which is called a double election), that return only, which the returning officer to whom the sheriff's precept was directed, has signed and sealed, is good; and the members by him returned shall sit, until displaced on petition. Sim. 184.

On petition to the house of commons, complaining of an undue election, forty-nine members shall be chosen by ballot, out of whom each party shall alternately strike out one, till they are reduced to thirteen, who, together with two more, of whom each party
party shall nominate one, shall be a select committee for determining such controverted election, 10 and 11 G. Ill. c. 16 and 42. See Parliament.

ELEEMOSINARIUS, the almoner, who received the eleemosinary rents and gifts, and duly distributed them to pious and charitable uses.

ELEGIT, is a writ of execution, either upon a judgment for debt on damages, or upon a forfeiture of the recognizance taken in the king's court. 1 Inst. 289.

By the common law, a man could only have satisfaction of goods, chattels, and the present profits of lands, by the writs of fieri facias or leveri facias; but not the possession of the lands themselves: so that if the defendant aliened his lands, the plaintiff was ousted of his remedy.

The statute 13 Ed. I. c. 18, therefore granted this writ, which is called an elegit, because it is in the election of the plaintiff, whether he will sue out this writ or one of the former. 3 Black. 418.

ELOPEMENT, is, when a married woman of her own accord departs from her husband, and dwells with an adulterer; for which without voluntary reconciliation to the husband, she shall lose her dower by the statute of Westminster 2, c. 34.

If a wife willingly leave her husband, and go away and continue with her avouterer, she shall be barred for ever of action to demand her dower that she ought to have of her husband's lands, if she be convicted thereof; except that her husband willingly and without coercion of the church, reconcile her, and suffer her to dwell with him, in which case, she shall be restored to her action. 13 Ed. I. st. 1. c. 34. See Adultery.

EMBEZZLEMENT, by stat. 39 G. III. c. 85, for protecting masters against embezzlements by their clerks and servants; servants or clerks, or persons employed for the purpose or in the capacity of servants or clerks, who shall, by virtue of such employment, receive or take into their possession, any money, goods, bond, bill, note, banker's draft, or other valuable security or effects, for or in the name, or on the account of their master or employer, or who shall fraudulently embezzle, secret, or make away with the same, or any part thereof; every such offender, shall be deemed to have feloniously stolen the same from his master or employer, for whose use, or on whose account the same was delivered.
livered to, or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, bond, bill, note, banker's draft, or other valuable security, was or were no otherwise received into the possession of his or their servants, clerk, or other person so employed; and every such offender, his adviser, procurer, aider, or abetter, being thereof lawfully convicted or attainted, shall be liable to be transported to such part, beyond the seas, as his majesty, by and with the advice of his privy council, shall appoint; for any term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged.

EMBLEMMENTS, signify the profits of land sown; but the word is sometimes used more largely, for any profits that arise and grow naturally from the ground, as grass, fruit, hemp, flax, &c. Cowel.

EMBRACERY, is an attempt to corrupt or influence a jury, or any way incline them to be more favorable to the one side than the other, by money, promises, letters, threats, or persuasions; whether the juror on whom such attempt is made, give verdict or not, or whether the verdict given be true or false. 1 Haw. 259.

The punishment of an embracer or embraceor is by fine and imprisonment; and for the juror so embraced, if it be by taking money, the punishment is (by divers statutes) perpetual infamy, imprisonment for a year, and forfeiture of tenfold the value. 4 Black. 140.

EMBROIDERY, no foreign embroidery, or gold or silver brocade, is permitted, to be imported into this kingdom on pain of being seized and burned, and a penalty of 100l. for each piece. No person is allowed to sell any foreign embroidery, gold or silver thread, lace, fringe, brocade, or make up the same into any garment, upon pain of having it burned, and penalty of 100l.

EMPARLANCE. See Imparlance.

ENCROACHMENT, an unlawful gaining upon the rights or possessions of another.

ENDEAVOUR, where one who has the use of his reason, endeavour to commit felony, &c. he shall be punished by our laws, but not to that degree as if he had actually committed it. 3 Inst. 68, 69.
ENDORSEMENT. See Indorsement, Bills of Exchange, and Acceptance.

ENDOWMENT, is the widow's portion; being a third part of all the freehold lands and tenements, of which her husband was seized at any time during the coverture. Of lands not freehold, her portion varies according to the custom in different places.

ENEMY, is properly an alien or foreigner, who in a public capacity, and in an hostile manner, invades any kingdom or country. If a prisoner be rescued by enemies, the goaler is not guilty of an escape; as he would have been if subjects had made the rescue, when he might have a legal remedy against them. 2 Haw. 150.

ENFRANCHISEMENT, the incorporating a person into any society or body politic; thus is the enfranchisement of one made a citizen of London, or other city, or burgess of any town corporate, because he is made partaker of the liberties which appertain to the corporation, wherein he is enfranchised.

ENTAIL signifies fee-tail, or fee-intailed. See Estate.

ENTIERTY, denotes the whole, in contradistinction to moiety which denotes the half.

ENTIRE TENANCY signifies a sole possession in one man.

ENTRY, writ of, is a writ directed to the sheriff, requiring him to command the tenant of the land, that he render to the demandant the premises in question, or appear in court on such a day, and shew why he hath not done it. Of this writ there are four kinds. 1. A writ of entry sur disseisin, that lies for the disseisee against the disseisor, upon a disseisin done by himself; and this is called a writ of entry in the nature of an assize. 2. A writ of entry sur disseisin in the per, for the heir by descent, who is said to be in the per, as he comes in by his ancestor. 3. A writ of entry sur disseisin in the per and cui, where the feoffee of a disseisor maketh a feoffment over to another; and then the form of a writ is, that the tenant had no title to enter, but by a prior alienage, to whom the intruder demised it. 4. A writ of entry sur disseisin in the post, which lies when after a disseisin, the land is removed from hand to hand, in case of a more remote seisin, whereunto the other three degrees do not extend. 1 Inst 238.

But all these writs are now disseised, as the title of lands is usually tried upon actions of ejectment or trespass.
ENTRY AD COMMUNEM LEGEM. The writ of entry ad communem legem lies, where tenant in dower, or tenant by the courtesy, or for life, aliens in fee, or for the life of another, or in tail, the lands which they hold, &c. after their death, he in the reversion who has it in fee, or for life, shall have this writ against whomsoever is in possession of the land.

ENTRY AD TERMINUM QUI PRÆTERIIT, a writ of entry ad terminum qui praeterit, lies where a man leases lands or tenements for term of life, or years, and afterwards the term expires, and he to whom the lease was made, or a stranger, enters upon the land, and occupies the same, and deforces the lessor; the lessor or his heirs shall have the writ. And this writ lies in the per, cui, and post; for if the lessee hold over his term, and afterwards make a feoffment; the lessor or heirs, may have this writ against the feoffee in the per; and if the feoffee make a feoffment over, he may have it against the second feoffee in the per and cui, and against the third feoffee in the post.

ENTRY IN CASU CONSIMILI, a writ of entry in casu consimili lies where tenant by the courtesy, or for life, or for another's life, aliens in fee, or in tail, or for life; now he in the reversion, who has an estate there for life, or in fee simple, or in tail, shall have that writ during the life of the tenant for life, who aliened.

ENTRY IN CASU PROVISO. The writ of entry in casu proviso, lies where tenant in dower aliens in fee, for life, or in tail, the land which he holds in dower; he who hath the reversion in fee, or in tail, or for life, shall maintain that writ against the alien, and against him who is the tenant of the freehold of land during the life of the tenant in dower, &c. and the writ, may be made in the per, cui, and post.

ENTRY CAUSA MATRIMOMII PRÆLOCUTI, lies where lands or tenements are given to a man, on condition, that he shall take the donor to his wife within a certain time, and he does not espouse her within the limited time, or espouses another, or otherwise disables himself, that he cannot take her according to the said condition; then the donor and her heirs shall have the said writ against him, or against whoever else is in the said land.

ENURE, to take place or effect, as a release made to a tenant for a term of life, shall enure to him in the reversion.

EQUALITY. The law delights in equality, so that when a charge
charge is laid upon one, and many ought to bear it he shall have
relief against the rest. 2 Rep. 25.

EQUITY, is a construction made by the judges, that cases out
of the letter of a statute, yet being within the same mischief or
cause of making the same, shall be within the same remedy that
the statute provideth. And the reason hereof is, that the law
maker could not possibly set down all cases in express terms: thus
though it may be unlawful to kill a man, yet it is not unlawful for
one to kill another assaulting him, in order to preserve his own
life. 4 Inst. 24.

EQUITY OF REDEMPTION ON MORTGAGES, if where
money is due on a mortgage, the mortgagee is desirous to bar the
equity of redemption, he may oblige the mortgagor either to pay
the money, or be foreclosed of his equity, which is done by pro-
cedings in the court of chancery.

ERROR, signifies an error in pleading, or in the process; and
the writ which is brought for remedy thereof, is called a writ of
error.

A writ of error, is a commission to judges of a superior court,
by which they are authorized to examine the record, upon
which a judgment was given in an inferior court, and on such ex-
amination, to affirm or reserve the same according to law. Jenk.
Rep. 25. For particulars as to the practice of writs of error, see
Impey's K.B. & C. P.

ESCAPE, an escape is, where one who is arrested gains his li-
iberty, before he is delivered by course of law.

Escapes are either in civil or criminal cases; and in both re-
spects, escapes may be distinguished into voluntary and negligent;
voluntary, where it is with the consent of the keeper; negligent
where it is for want of due care in him.

In civil cases: after the prisoner hath been suffered voluntarily
to escape, the sheriff can never after retake him, but must answer
for the debt; but the plaintiff may retake him at any time. In
the case of a negligent escape, the sheriff upon fresh pursuit, may
retake the prisoner; and the sheriff shall be excused, if he hath
him again before any action brought against himself for the es-
cape.

When a defendant is once in custody in execution, upon a ca-
pias ad satisfaciendum, he is to be kept in close and safe custody;
and if he be afterwards seen at large, it is an escape; and the plaintiff may have an action thereupon for his whole debt: for though upon arrests, and what is called messu process, being such as intervenes between the commencement and end of a suit, the sheriff, till the statute 8 and 9 W. c. 27, might have indulged the defendant as he pleased, so as he produced him in court to answer the plaintiff at the return of the writ; yet, upon a taking in execution, he could never give any indulgence; for in that case, confinement is the whole of the debtor's punishment, and of the satisfaction made to the creditor.

A rescue of a prisoner in execution, either in going to goal, or in goal, or a breach of prison, will not excuse the sheriff from being guilty of and answering for the escape; for he ought to have sufficient force to keep him, seeing he may command the power of the county. 3 Black 415 and 6.

In criminal cases: an escape of a person arrested, by eluding the vigilance of his keeper before he is put in hold, is an offence against public justice, and the party himself is punishable by fine and imprisonment: but the officer permitting such escape, either by negligence or connivance, is much more culpable than the prisoner, who has the natural desire of liberty to plead in his behalf. Officers therefore, who after arrest negligently permit a felon to escape, are also punishable by fine; but voluntary escapes, amount to the same kind of offence, and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; and this whether he was actually committed to goal, or only under a bare arrest. But the officer cannot be thus punished, till the original delinquent is actually found guilty or convicted by verdict, confession, or outlawry; otherwise, it might happen that the officer should be punished for treason or felony, and the party escaping turn out to be an innocent man. But before the conviction of the principal party, the officer thus neglecting his duty, may be fined and imprisoned for a misdemeanor. 4 Black. 129.

If any person shall convey or cause to be conveyed into any goal, any disguise, instrument, or arms, proper to facilitate the escape of prisoners, attainted or convicted of treason or felony, although no escape or attempt to escape be made; such person so offending,
offending, and convicted, shall be deemed guilty of felony and be transported for seven years. 16 G. II. c. 31.

ESCHEAT, in our law, denotes an obstruction of the course of descent, and a consequent determination of the tenure, by some unforeseen contingency; in which case, the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee. 2 Black, 244.

Escheat happens either for want of heirs of the person last seized, or by his attainder for a crime by him committed; in which latter case, the blood is tainted, stained, or corrupted, and the inheritable quality of it is thereby extinguished.

For want of heirs, is where the tenant dies without any relations on the part of any of his ancestors, or where he dies without any relations of those ancestors, paternal or maternal, from whom his estate descended; or where he dies without any relations of the whole blood. Bastards are also incapable of inheritance; and therefore, if there be no other claimant than such illegitimate children, the land shall escheat to the lord; and, as bastards cannot be heirs to themselves, so neither can they have any heirs, but those of their own bodies, and therefore if a bastard purchase lands, and die seized thereof without issue and intestate, the land shall escheat to the lord of the fee. Aliens also, that is persons born out of the king's allegiance, are incapable of taking by descent; and unless naturalized, are also incapable of taking by purchase; and therefore, if there be no natural born subjects to claim, such lands shall in like manner escheat.

By attainder for treason or other felony, the blood of the person attainded is corrupted and stained, and the original donation of the feud is thereby determined, it being always granted to the vassal on the implied condition of his well demeaning himself. In consequence of which corruption and extinction of hereditary blood, the land of all felons would immediately revert in the lord, but that the superior law of forfeiture intervenes, and intercepts it in his passage; in case of treason, for ever; in case of other felony, for only a year and a day; after which time it goes to the lord, in a regular course of escheat. 2 Black, c. 15.

ESCHEATOR, was an ancient officer, so called because his office was properly to look to escheats, wardships, and other casualties belonging to the crown. This office having its chief de-
pittance on the courts of wards is now out of date. Co, Lit. 13 b. 4 Inst. 225.

ESCÚAGE, signifies a kind of knight's service, called service of the shield, whereby the tenant is bound to follow his lord into the Scotch or Welsh wars, at his own expense. He who held a whole knight's fee, was bound to serve with horse and arms forty days at his own charge, and he who held half a knight's fee, was to serve twenty days.

ESQUIRE, is a name of dignity, next above the common title of gentleman, and below a knight; heretofore it signified one that was attendant, and had his employment as a servant, waiting on such as had the order of knighthood, bearing their shields, and helping him to horse and such like.

All Irish and foreign peers, are only esquires in our law, and must be so named in all legal proceedings. 1 Black. 406.

ESQUIRES OF THE KING, are such who have the title by creation: these when they are created, have a collar of SS. put about their necks, and a pair of silver spurs is bestowed on them; and they were wont to bear before the prince in war, a shield or lance. There are four esquires of the king's body to attend on his majesty's person.

ESSENDI QUIETUM DE TELONIO, a writ that lies for citizens and burgesses of any city or town, that have a charter or prescription to exempt them from toll through the whole realm, if it happened to be any where exacted of them.

ESSOIN, signifies the allegation of an excuse for him that is summoned, or sought for; to appear and answer to an action real, or to perform suit to a court baron, upon just cause of absence. The causes that serve to essoin any man summoned are the following:

ESSOIN DE MALO LECTI, is when the defendant is sick in bed.

ESSOIN DE MALO VENIENDI, is when the defendant is infirm in body, and not able to come.

ESSOIN DE MALO VILLÆ, is when the defendant appears in court the first day, but departed without pleading, and being afterwards surprised by sickness, or other infirmity, cannot attend the court, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come
come, pro lucrari et pro perdere; and this must be admitted for full proof, without any farther surety, for it is incumbent on the plaintiff to prove whether the essoin be true or not.

ESSOIN PER SERVITIUM REGIS, is when the defendant is in the king's service.

ESSOIN DE ULTRA MARE, when the defendant is beyond sea.

ESSONIO DE MALO LECTI, a writ directed to the sheriff, for the sending of four lawful knights to view one that had essoined himself, de malo lecti.

ESTABLISHMENT OF DOWER. The assurance of dower made to the wife by the husband, or his friends, before or at marriage; and assignment of dower, is the setting it out by the heir afterwards, according to the establishment.

ESTATE, signifies such inheritance, freehold, term for years, tenancy by statute merchant, staple, elegit, or the like, as any man hath in lands and tenements. Estates are real, of lands, tenements, &c. or personal of goods, or chattels; otherwise distinguished into freeholds that descend to the heir, and chattels which go to the executors. Co. Lit. 315.

Of estate in fee-simple; an estate in fee-simple, is an estate in lands, tenements, lordships, advowsons, commons, estovers, and all hereditaments, to a man and his heirs for ever: also, where a corporation sole or aggregate are capable of holding in succession, and lands are given to them and their successors, they are said to have a fee-simple. 2 Bae. Abr. 249.

Of estate in tail; an estate is said to be intailed, when it is ascertained what issue shall inherit it.

What things may be intailed by the statute of intails. The statute makes use of the word tenementum, and therefore the estate to be intailed, may be as well incorporeal as corporeal inheritances, because the word tenementum, comprehends the one as well as the other, and consequently, not only lands may be intailed, but all rents, commons, estovers, or other profits arising from lands. Co. Lit. 19, b. 20, a.

What words create an estate tail. When the notion of succession prevailed, it was necessary in feudal donations to use the word heirs, to distinguish such descendible feud from that, which was granted only for life; but as to the word body, it was necessary to make use of that in the donation, but it might be expressed.
ed by any equivalent words, and therefore a gift to a man, and hereditibus de se, or de carne quo sibi contigerit habere, or procreavit, is a good estate tail; for these sufficiently circumscribe the word heirs, to the descendants of the feudatory: and the reason of the difference is, for that inheritances being only derived from the law, and the law requires the word heirs, that comprehends the whole notion of such legal representation; but the limiting the inheritance to the descendants of this or the other body, is only the particular intention of the person that forms the gift, and therefore the law leaves every man, to express himself in such manner as may manifest that intention. 2 Bac. Abr. 259.

Of tenant in tail changing his estate. The statute de domis, affecting a perpetuity, restrained the donee in tail, either from alienating or charging his estate tail; and by that act the tenant in tail, was likewise to leave the land to his heirs, as he received it from the donor; and upon that statute, the heir in tail might have avoided any alienation or incumbrance of his ancestor; and as the law stood upon that act, so might he in reversion, when the heirs of the donee failed, which were inheritable to the gift. The crown long struggled to break through the perpetuity which was established by this law; and in the reign of Ed. IV. we find the pretended recompence given against the vouchee in the common recovery, to be allowed an equivalent for the estate tail; and because this recompence was to go in succession as the land in tail should have done, therefore they allowed the recovery to bar the reversion as well as the issue in tail, because he in the reversion was to have the recompense in failure of issue of the donee. 2 Bac. Abr. 265.

ESTOPPEL, an impediment or bar of action, arising from the act of him that either hath, or might have had his action. For example; a tenant makes a feoffment by collusion to one, the lord accepts the services of the feoffee; by this he debars himself of the worship of the tenant's heir. There are three kinds of estoppels, viz.

By matter of record, as by letters patent, fine, recovery, pleading, taking of continuance, confession, impartance, warrant of attorney, admittance.

By matter in writing, as by deed indented, by making of an acquittance
quittance by deed indented or deed poll, by defeasance by deed indented, or deed poll.

*By matter in pais,* as by livery, by entry, by acceptance of rent, by partition, and by acceptance of an estate. *Co. Lit.* 352.

Every estoppel, because it concludes a man to alledge the truth, must be *certain to every intent,* and not to be taken by argument or inference. *Id.*

ESTOVERS, is a liberty of taking necessary wood for the use or furniture of an house or farm. And this any tenant may take from off the land let or demised to him, without waiting for any leave, assignment, or appointment of the lessor, unless he be restrained by special covenant to the contrary. 2 Black. 35.

ESTRAYS AND WAIFS. *Estrays* are where any horses, sheep, hogs, beasts, or swans, or any beast that is not wild, come into a lordship, and are not owned by any man. *Kitch.* 23.

The reason of estray is, because when no person can make title to the thing, the law gives it to the king, if the owner do not claim it within a year and a day.

*Waifs* are goods which are stolen, and waved, or left by the felon, on his being pursued, for fear of being apprehended; and forfeited to the king or lord of the manor; and though waifs, are generally spoken of things stolen; yet if a man be pursued 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 the fugitive’s goods, and not forfeited, till it be found before the coroner, or otherwise of record, that he fled for the felony. 2 Haw. 450.

*Waifs and strays,* were *anciently* the property of the finders, by the law of nature; and afterwards the property of the king by the law of nations. *Dalt. Sher.* 79.

*Waifs and strays,* not claimed within the year and day, are the lord’s. For where the lord has a beast a year and a day, and it has been cried in the church and markets, the property is changed. *Kitch.* 80.

But it must be a year and a day from the time of proclamation, and not from the time of seizure; for it does not become an *estray* till after the first proclamation. 11 *Mod.* 89.

ESTREAT, is a true copy or note of some original writing or record,
record, and especially of fines and amercements imposed in the rolls of a court, and extracted or drawn out from thence, and certified into the court of exchequer; whereupon, process is awarded to the sheriff to levy the same.

ESTREPEMENT or ESTREPAMENT, the spoil made by a tenant for life, upon any lands or woods to the prejudice of the reversioner.

Estrepement, also signifies a writ, which lies in two cases; the one is, when the person having an action depending (as a formdon, or dum fuit infra atatem, or writ of right, or any other) wherein the demandant is not to recover damages, sues to inhibit the tenant from making waste during the suit. The other is for the demandant, that is adjudged to recover seisin of the land in question, and before execution sued by the writ habere facias seisinam, for fear of waste to be made before he can get possession, he then sues out this writ.

EVES-DROPPERS, are such as stand under walls or windows, by night or day, to hear news, and to carry them to others, to cause strife and contention among neighbours. These are evil members in the commonwealth, and therefore by stat. Westminster 1. c. 33, are to be punished: and this misdemeanor is presentable and punishable in the court leet.

EVIDENCE, is the testimony adduced before a court or magistrate of competent jurisdiction, by which such court or magistrate are enabled to ascertain any fact which may be litigated between the parties.

This may be of two kinds, viz. written or verbal, the former by deeds, bonds, or other written documents, the latter by witnesses examined viva voce.

Evidence may be further divided into absolute and presumptive; the former is direct, in positive or absolute affirmance or denial of any particular fact; the latter collateral, and from the conduct of the parties, affords an inference that such a particular fact, did or did not occur.

The party making an affirmative allegation which is denied by his adversary, is in general required to prove it, unless indeed a man be charged with not doing an act, which by law he is required to do; for here a different rule must necessarily prevail, and the rule is, that the evidence must be applied to the particular
Far fact in dispute; and therefore no evidence not relating to the
issue, or in some manner connected with it, can be received;
nor can the character of either party, unless put in issue by the
very proceeding itself, be called in question; for the cause is to
be decided on its own circumstances, and not to be prejudiced
by any matter foreign to it.

It is an established principle, that the best evidence—the nature
of the case will admit shall be produced, for if it appear, that
better evidence might have been brought forward, the very cir-
cumstance of its being withheld, furnishes a suspicion that it would
have prejudiced the party in whose power it is, had he produced
it. Thus if a written contract be in the custody of the party, no
verbal testimony can be received of its contents.

The law never gives credit to the bare assertion of any one,
however high his rank or pure his morals; but requires (except in
particular cases with respect to quakers) the sanction of an oath,
the personal attendance of the party in court that he may be ex-
amined and cross-examined by the different parties; and there-
fore in cases depending on parole or verbal evidence, the testi-
mony of persons who are themselves conversant with the facts
they relate, must be produced, the law paying no regard, except
under very special circumstances, to the hearsay evidence. Thus
in some cases, the memorandum in writing made at the time, by
a person since deceased, in the ordinary way of his business, and
which is corroborated by other circumstances, will be admit-
ted as evidence of the fact.

What a party himself has been heard to say, does not fall
within the objection. As to hearsay evidence, any thing there-
fore which the party admits, or which another asserts in his pre-

cence, and he does not contradict, is received as evidence against
him; but what is said by his wife, or any other member of his
family in his absence, will be rejected.

But a distinction must be made between admission, and an of-
fer of compromise, after a dispute has arisen. An offer to pay a
sum of money in order to get rid of an action, is not received in
evidence of a debt, because such offers are made to stop litiga-
tion, without regard to the question whether any thing, or
what is due.

Admission of particular articles before arbitration are also good
evidence,
evidence, for they are not made with a view to compromise, but the parties are contesting their rights as much as they could do on a trial.

In cases where positive and direct evidence is not to be looked for, the proof of circumstance and fact consistent with the claim of one party, and inconsistent with that of the other, is deemed sufficient to enable the jury, under the direction of the court of justice, to presume the particular fact, which is the subject of controversy; for the mind comparing the circumstances of the particular case, judges therefrom as to the probability of the story, and for want of better evidence, draws a conclusion from that before it.

Written evidence has been divided into two classes; the one that which is public, the other private; and this first, has been subdivided into matters of record, and others of an inferior nature.

The memorials of the legislature, such as acts of parliament, and other proceedings of the two houses, where acting in a legislative character; and judgment of the king’s superior courts of justice, are denominated records, and are so respected by the law, that no evidence whatsoever can be received in contradiction of them; but these are not permitted to be removed from place to place, to serve a private purpose, and are therefore proved by copies of them, which in the absence of the original, is the next best evidence.

Of persons incompetent to give evidence. All persons who are examined as witnesses, must be fully possessed of their understanding; that is such an understanding as enables them to retain in memory, the events of which they have been witnesses, and give them a knowledge of right and wrong.

A conviction of treason or felony, and every species thereof, such as perjury, conspiracy, barratry, &c. prevents a man when convicted of them, from being examined in a court of justice. When a man is convicted of any of the offences before mentioned, and judgment entered up, he is for ever after incompetent to give evidence, unless the stigma be removed, which in case of a conviction of perjury, on the stat. of 5 Eliz. c. 9, can never be by any means short of a reversal of the judgment, for the statute has in this case, made his incompetency part of his punishment, but if a
man be convicted of perjury, or any other offence at the common law, and the king pardons him in particular, or grants a general pardon to all such convicts, this restores him to his credit, and the judgment no longer forms an objection to his testimony; but an actual pardon must be shewn under the great seal, the warrant for it under the king's sign manual not being sufficient. To found this objection to the testimony of a witness, the party who intends to make it, should be prepared with a copy of the judgment regularly entered upon the verdict of conviction, for until such judgment be entered, the witness is not deprived of his legal privileges.

Persons may also be incompetent witnesses, by reason of their interest in the cause. The rule which has the most extensive operation in the exclusion of witnesses, and which has been found most difficult in its application, is that which prevents persons interested in the event of a suit, unless in a few excepted cases of evident necessity, from being witness in it. Of late years the courts have endeavoured, as far as possible consistent with authorities, to let the objection go to the credit rather than the competency of a witness; and the general rule now established is, that no objection can be made to a witness on this ground, unless he be distinctly interested, that is, unless he may be immediately benefitted or injured by the event of the suit, or unless the verdict to be obtained by his evidence, or given against it, will be evidence for or against him in another action, in which he may afterwards be a party; any smaller degree of interest, as the possibility that he may be liable to an action in a certain event, or that, standing in a similar situation with the party by whom he is called, the decision in that cause, may by possibility influence the minds of a jury in his own, or the like, though it furnish a strong argument against his credibility, does not destroy his competency.

On the question, how far persons who have been defrauded of securities, or injured by a perjury or other crime, can be witnesses in prosecuting for those offences, the event of which might possibly exonerate them from the obligation they are charged to have entered into, or restore to them money which they have been obliged to pay; the general principle now established is this, the question in a criminal prosecution or personal act being
the same with that in a civil cause, in which the witnesses are interested, goes generally to the credit, unless the judgment in the prosecution where they are witnesses, can be given in evidence in this cause wherein they are interested. But though this is the general rule, an exception to it seems to be established in the case of forgery; for many cases have been decided, that a person whose hand-writing has been forged to an instrument, whereby if good he would be charged with a sum of money, or one who has paid money in consequence of such forgery, cannot be a witness on the indictment. In cases where the party injured cannot by possibility derive any benefit from the verdict in the prosecution, as in indictments for assault, and the like personal injury, his competence has never been doubted. It is a general rule that a party cannot be examined as a witness, for he is in the highest degree interested in the event of it; but where a man is not in point of fact interested, but only a nominal party, as where members of a charitable institution are defendants in their corporal character, there is no objection to an individual member being examined as a witness for the corporation, for in this case he is giving evidence for the public body only, and not for himself as an individual. Peake's N. P. Cas. 153. Bul. N. P. 293.

But instances sometimes occur, in which persons substantially interested, and even parties in a cause, are permitted to be examined from the necessity of the case, and absolute impossibility of procuring other evidence.

In an action on the statute of Winton, the party robbed is a witness; and on the same principle of necessity it has been held, that persons who become interested in the common course of business, and who alone can have knowledge of the fact, may be called as witnesses to prove it, as in the case of a servant who has been paid money, or a porter who in the way of his business, delivers out or receives parcels, though the evidence whereby he charges another with the money or goods, exonerates himself from his liability to account to his master for them; for if this interest were to exclude testimony, there would never be evidence of any such facts. Bul. N. P. 289.

As no one can be witness for himself, it follows of course husband and wife, whose interest the law has united, are incompetent to give evidence on behalf of each other, or of any person whose
whose interest is the same, and the law, considering the policy of marriage, also prevents them giving evidence against each other, for it would be hard that a wife, who could not be a witness for her husband, should be a witness against him; such a rule would occasion implacable divisions and quarrels between them. In like manner, as the law respects the private peace of men, it considers the confidential communications made for the purpose of defence in a court of justice. By permitting a party to intrust the cause in the hands of a third person, it establishes a confidence and trust between the client and person so employed.

Barristers and attorneys, to whom facts are related professionally during a cause, or in contemplation of it, are neither obliged nor permitted to disclose the facts so divulged during the pendency of that cause, or at any future time; and if a foreigner, in communication with his attorney, have recourse to an interpreter, he is equally bound to secrecy.

Where a man has by putting his name to an instrument, given a sanction to it, he has been held by some judges to be precluded, or stopped from giving any evidence in a court of justice which may invalidate it; as in the case of a party to a bill of exchange or promisory note, who has been said not to be an admissible witness to destroy it, on the ground, that it would enable two persons to combine together; and by holding out a false credit to the world, deceive and impose on mankind. On this principle it was held, that an indorser could not be a witness to prove notes usurious, in an action or a bond founded on such notes, though the notes themselves had been delivered up, on the execution of the bond. At one time this seems to have been understood as a general principle applicable to all instruments; but in a case where an underwriter of a policy of insurance, was called to prove the instrument void as against another underwriter, and objected to on this ground; the court declared, that it extended only to negotiable instruments, and he was admitted to give evidence destructive of the policy.

When a witness is not liable to any legal objection, he is first examined by the counsel for the party on whose behalf he comes to give evidence, as to his knowledge of the fact he is to prove. This examination in cases of any intricacy, is a duty of no small importance
importance in the counsel; for as on the one hand, the law will not allow him to put what are called leading questions, viz. to form them in such a way as would instruct the witnesses in the answers he is to give; so on the other, he should be careful that he make himself sufficiently understood by the witness, who may otherwise omit some material circumstance of the case.

The party examined must depose those facts only of which he has an immediate knowledge and recollection; he may refresh his memory with a copy taken by himself from a day-book; and if he can then speak positively as to his recollection, it is sufficient; but if he have no recollection further than finding the entry in his book, the book itself must be produced. Where the defendant had signed acknowledgments of having received money, in a day-book of the plaintiff, and the plaintiff's clerk afterwards read over the items to him, and he acknowledged them all right, it was held, that the witness might refresh his memory by referring to the books, although there were no stop to the items on which the receipt was written, for this was only proving a verbal acknowledgment, and not a written receipt.

Lord Ellenborough, upon the authority of Lord Chief Justice Tully, has recently laid down a very important doctrine, viz. that no witness shall be bound to answer any question which tends to degrade himself, or to shew him to be infamous.

EXACTION, a wrong done by an officer, or one pretending to have authority, by taking a reward or fee, for that which the law allows not.

EXAMINATION, justices before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before they commit such prisoner, shall take his examination, and information of those who bring him, of the fact and circumstances; and as much thereof as shall be material to prove the felony, shall be put in writing within two days after the examination, and the same shall certify in such manner as they should do, if such prisoner had been bailed, upon such pain, as in the act 1 & 2 P. & M. c. 13. is limited.

EXAMINERS IN CHANCERY, are two officers who examine upon oath witnesses produced on either side in London, or near it, upon such interrogatories as the parties to any suit exhibit
hibit for that purpose. In the country witnesses are examined by commissioners, usually attorneys not concerned in the cause, on the parties joining in commission, &c.

EXCEPTION, is a stop or stay to any action. In law proceedings, it is a denial of a matter alleged in bar to an action; and in chancery, it is what is alleged against the sufficiency of an answer.

EXCEPTION TO EVIDENCE, at common law a writ of error, lay for an error in law, apparent on the record, or for an error in fact, where either party died before judgment; yet it lay not for an error in law not appearing on the record. 2 Inst. 426.

By the stat. of Westminster, 2. when one impleaded before any of the justices, alleges an exception, praying they will allow it, and if they will not, if he that alleges the exception writes the same, and requires the justices will put thereto their seals, the justices shall so do, and if upon complaint made of the justice, the king cause the record to come before him, and the exception be not found in the roll, and the plaintiff shew the written exception, with the seal of the justices thereto put, the justice shall be commanded to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed.

The statute extends to the plaintiff as well as the defendant, also to him who comes in loco tenentis, as one that prays to be received, or the vouchee; and in all actions, whether real, personal, or mixt. 2 Inst. 427.

EXCEPTION IN DEEDS AND WRITINGS, the exception is a clause whereby the donor, feoffor, grantor, or other person contracting, excepts, or takes a particular thing out of a general thing granted or conveyed. The thing excepted is exempted, and does not pass by the grant, neither is it parcel of the thing granted; as if a manor be granted, excepting one acre thereof, hereby in judgment of law, that acre is severed from the manor. 1 Wood's Convey. 241.

Exception, must be of such a thing as he who makes it may have, and does belong to him.

It must not be the whole thing granted, but part thereof only.
The thing that is excepted, must be part of the thing granted before, and not of some other thing.

The thing excepted, must be of such a thing as may be severed from the thing granted, and not inseparable incidents.

It must be of a particular thing out of a general, or of an entire thing, and not of a particular out of a particular, or the whole thing itself granted.

An exception, must be conformable to the grant, and not repugnant thereto; and

The thing excepted must be certainly described and set down.

EXCHANGE, an exchange is a mutual grant of equal interests, the one in consideration of the other. 2 Black. 323.

An exchange may be made of things that lie either in grant or in livery. But no livery of seisin, even in exchanges of freehold, is necessary to perfect the conveyance: for each party stands in the place of the other, and occupies his right, and each of them hath already had corporal possession of his own land. But entry must be made on both sides; for if either party die before the entry, exchange is void, for want of sufficient notoriety. Id.

In exchange, the estates of both parties should be equal; that is if the one hath a fee simple in the one land, the other should have like estate in the other land; and if the one have fee-tail in the one land, the other ought to have the like estate in the other land; and so of other estates. But it is not material in the exchange, that the lands be of equal value, but only that they be equal in kind and manner of the estate given and taken. 1 Inst. 51.

Exchange among merchants, is a commerce of money, or a bartering or exchanging the money of one city or country for that of another: money, in this sense, is either real or imaginary; real, any real specie current in any country at a certain price, at which it passes by the authority of the state, and of its own intrinsic value; by imaginary money, is understood all the denominations made use of to express any sum of money, which is not the just value of any real specie.

Whatever may be the denomination or value of the coin circulating in any country, there is always a rate of exchange, founded upon its intrinsic value, which is called par, between every two countries; but in proportion as the demand may be greater or smaller
smaller between one country and another, bills or money become plenty or scarce. When in the market or upon 'Change, which is the money-market, the bills drawn are in greater quantities than the remittances, then they sink in value, and the rate of exchange is said to be against the place. When on the contrary there are more bills wanted than can easily be obtained, the rate of exchange is said to be favourable, and is above par.

Re-exchange, is when the holder of a bill, finds it not paid by the acceptor, then it becomes necessary to take those steps which the circumstances of the case, the law of the land, and the usage of merchants authorize.

The holder of a bill, upon payment being refused, may lawfully take up from a banker, in the place where it is payable, the amount of the bill, and give in return a bill payable upon sight, upon the party from whom the first bill was received, or upon any other person. If he be obliged in consequence of the course of exchange, and the balance being in favour of cash, to pay a price for the money which he receives, that price is the re-exchange, which must be compensated by the preceding parties to the bill.

EXCHANGE OF CHURCH LIVINGS, is where two persons having procured licence from the ordinary to treat of and exchange, do by one instrument in writing, agree to exchange their benefices, being both spiritual, and in order therunto resign them into the hands of the ordinary: such exchange being executed, the resignations are good. Watts. c. 4.

These exchanges are now seldom used.

EXCHEQUER. This which is a court of law and equity, is a very ancient court of record, established by William the Conqueror, as a part of the aula regis, though regulated and reduced to its present state by Ed. I. and intended principally to order the revenues of the crown, and to recover the king's debts and duties.

The court consists of two divisions, viz. the receipt of the exchequer, which manages the royal revenue; and the judicial, which is again subdivided into a court of equity, and a court of common law.

The court of equity is held in the exchequer, before the lord treasurer, the chancellor of the exchequer, the chief baron, and three puisne barons. The primary and original business of this court
court was to call the king's debtors to account, by bill filed by the attorney general, and to recover any lands, tenements, or hereditaments, goods, chattels, or other profits or benefits, belonging to the crown.

This court, which was established merely for the benefit of the king's accountant, is thrown open; and now, by suggestion of privilege, any person may be admitted to sue here, as well as the king's accountant.

An appeal from the equity side of this court, lies immediately to the house of peers; but from the common law side, pursuant to 31 Ed. III. c. 12. a writ of error must first be brought into the court of exchequer chamber, from whence, in the dernier resort, there lies an appeal to the House of Lords.

EXCHEQUER CHAMBER, this court has no original jurisdiction, but is merely a court of appeal, to correct the errors of other jurisdictions; and consists of the lord chancellor, the lord treasurer, with the justices of the king's-bench and common-pleas. In imitation of this, a second court of exchequer-chamber was erected by 27 Eliz. c. 8. consisting of the justices of the common-pleas, and the barons of the exchequer; before whom writs of error may be brought, to reverse judgments in certain suits commenced originally in the court of king's-bench. Into the exchequer-chamber, are sometimes adjourned from the other courts, such causes, as the judges upon argument find to be of great weight and difficulty, before any judgment is given upon them in the court.

EXCISE, is an inland imposition, sometimes paid upon the consumption of the commodity, or frequently upon the retail sale; which is the last stage previous to the consumption.

For more easily levying the revenue of the excise, the kingdom of England and Wales, is divided into about fifty collections, some of which are called by the names of particular counties, others by the names of great towns; where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties, every such collection is subdivided into several districts, within which there is a supervisor; and each district is again subdivided into outrides and foot-walks, within each of which there is a gauger or surveying officer.

The commissioners or sub-commissioners in their respective cir-
Excurts and divisions, shall constitute, under their hands and seals, so many gaugers as they shall find needful.

Arrears of duties. By several acts of parliament, all articles in the possession of persons subject to the excise laws, together with all the materials and utensils of whatsoever description, are made liable for the arrears of duties, whether these be single or double duties; and if a trader, being in arrears for the single duties, become a bankrupt, and is convicted after the assignment of his effects, the double duties are a lien upon the excisable commodities, utensils, and materials in the hands of his assignees, and the commissioners or magistrates, may authorize the penalty to be levied upon all such commodities, and all the materials, preparations, utensils, and vessels for making thereof, in the custody of the bankrupt, or any person or persons in trust for him, 2 Doug. 411.

Bonds, for the exportation of excisable commodities, are to be taken by officers of excise, and they are to be given generally upon all excisable articles, at the place where exported.

 Forgery, of any stamps, licences, certificates, permits, or any other excise documents, is by various statutes made a capital felony.

Licences, in all cases where licences are required, the licence will only sanction the business carried on in that particular place, for which such licence was granted; but when the business is carried on by partners, one licence will be sufficient to cover the firm.

Officers of excise. The officers of excise are to be appointed; and may be dismissed, replaced, or altered, by the commissioners under their hands and seals; their salaries are allowed and established by the treasury; and by 1 W. & M. c. 24. s. 15. if it be proved by two witnesses, that any officer has demanded or taken any money, or other reward whatever, except of the king, such offender shall forfeit his office.

By several statutes, no process can be sued out against any officers of excise, for any act done in the execution of his office, until one month after notice given, specifying the cause of action, and the name and abode of the person who is to begin, and the attorney who is to conduct the action; and within one month after such notice, the officer may tender amends, and plead such tend,

X.3
der in bar; and having tendered insufficient or no amends, he may with leave of the court, before issue joined, pay money into court.

Officers of excise, are empowered to search at all times of the day, entered warehouses, or places for tea, coffee, &c. But private houses can only be searched upon oath of the suspicion before a commissioner or justice of peace, who can by their warrant authorize a search.

Permits, persons dealing in exciseable commodities are entitled to permits for removing the same to different places in certain quantities, and under certain regulations. These permits are written upon a peculiar species of paper, and manufactured expressly for the purpose; and by 23 Geo. III. c. 70. s. 11. no permit paper is to be delivered out before it shall be filled up agreeable to the request note of a trader; and officers knowingly granting any false permit, making false entries in the counter part thereof, or receiving any commodities into stock with a false or forged permit, are to be transported for seven years.

Samples. Officers of excise, are by various acts empowered to take samples of exciseable commodities, paying the prices therein regulated for the same.

Seizures When an officer makes a seizure of any spirits or other articles, he must lay his hand on the casks, vessels, &c. so seized, and declare that he seizes such spirits, &c. and the casks or vessels containing the same, for the use of his majesty and of himself; but if the officer happen to be alone when he makes such seizure, he must afterwards in the presence of witnesses, again lay his hand on such cask, vessel, &c. and repeat the former declaration of seizure.

All informations on seizures, must be laid in the names of the officers making the same.

By 41 Geo. III. c. 96. commissioners of excise are empowered to make restitution of exciseable goods.

Scales and weights: By various acts of parliament, traders subject to the excise laws, are to keep just and sufficient scales and weights, under penalty of 100l. for every such offence, and the scales and weights may be seized by the officer.

Traders, manufacturers, and dealers liable to the excise duties, are to assist the officers in weighing stock; and forcibly obstruct-
ing, or using any act or contrivance to prevent or impede the officer from taking a true account, incurs a penalty of 100l. For particulars respecting the excise laws, see The Complete Abridgment of the Excise Laws.

EXCOMMUNICATION, is the highest ecclesiastical censure, which can be pronounced by a spiritual judge against a christian; for thereby he is excluded from the body of the church, and disabled to bring any action, or sue any person in the common law courts. Co. Lit. 133.

The sentence of excommunication, was instituted originally for preserving the purity of the church; and it seems agreed, that wherever the spiritual court hath jurisdiction in any cause, and the party refuses to appear to their citation, or after sentence, being admonished to obey their decree, that he may be excommunicated. 1 Rol. Abr. 883.

A person excommunicated, is thereby disabled to be a witness in any cause; he cannot be attorney or procurator for another; he is to be turned out of the church by the churchwardens, and not to be allowed christian burial. Gibs. Cod. 435.

The sentence of excommunication, can only be pronounced by the bishop, or other person in holy orders, being a master of arts at least; also the priest's name pronouncing such sentence, is to be expressed in the instrument issuing under seal out of the court. Gibs. Cod. 1095.

EXCOMMUNICATO CAPIENDO, a writ directed to the sheriff, for apprehending him who stands obstinately excommunicated, forty days; for such an one not seeking absolution, hath, or may have, his contempt certified into the chancery; whence issueth this writ, for imprisoning him without bail or main-prize until he conform. 5 Eliz. c. 23.

EXCOMMUNICATO-DELIBERANDO, a writ to the sheriff, for the delivery of an excommunicate person out of prison, upon certificate of the ordinary, of his conformity to the jurisdiction ecclesiastical. F. N. B. 63.

EXCOMMUNICATO RECIPIENDO, a writ whereby persons excommunicate, being for their obstinacy committed to prison, and unlawfully delivered thence, before they have given caution to obey the authority of the church, are commanded to be sought for and imprisoned again.

EXECUTION is a judicial writ, grounded on the judgment of
the court from whence it issues: and is supposed to be granted by
the court at the request of the party, at whose suit it is issued, to
give him satisfaction on the judgment which he hath obtained:
and therefore an execution cannot be sued out in one court; upon
a judgment obtained in another. *Impy, K. B.*

*Executions* in actions where money is recovered, as a debt or
damages, are of five sorts: 1. against the *body* of the defendant;
2. or against his *goods* or chattels; 3. against his *goods* and the *pro-
fits* of his lands; 4. against the *goods* and the *possession* of his land;
5. against all three, his *body*, *lands*, and *goods*. 3 *Black.* 414.
See *Capias ad satisfaciendum*, *fieri facias*, *levare facias*, and *ele-
git.*

**EXECUTION OF CRIMINALS,** must be according to the
judgment; and the king cannot alter a judgment from hanging to
beheading, because no execution can be warranted, unless it be
pursuant to the judgment. 3 *Inst.* 52.

Execution of criminals is the completion of human punishment;
and this in all cases, as well capital as otherwise, must be per-
formed by the legal officer, the sheriff, or his deputy. 4 *Black.*
405.

**EXECUTIONE FACIENDA IN WITHERNAMIUM,** a
writ that lies for taking his cattle, who formerly had conveyed out
of the county the cattle of another: so that the bailiff, having au-
thority from the sheriff to replevy the cattle so conveyed away,
could not execute his charge.

**EXECUTIONE JUDICII,** a writ which lies where judgment
is given in any court of record, and the sheriff or bailiff neglecting
to do execution of the judgment, the party shall then have this
writ directed to the said sheriff or bailiff; and if they shall not do
execution, he shall have an *alis*, and *pluries.* And if upon this
writ execution is not done, or some reasonable cause returned why
it is delayed, the judges of the court may amerce them.

**EXECUTOR,** is a person appointed by the testator, to carry
into execution his will and testament after his decease. The regu-
lar mode of appointing an executor, is by naming him expressly
in the will; but any words indicating an intention of the testator
to appoint an executor, will be deemed a sufficient appointment.

Any person capable of making a will, is also capable of being
an executor; but in some cases, persons who are incapable of
making a will, may nevertheless act as executors, as infants, or
married.
married women; to obviate however, inconveniences which have occurred respecting the former, it is enacted by stat. 38 G. III. c. 89, that where an infant is sole executor, administration, with the will annexed, shall be granted to the guardian of such infant, or such other person, as the spiritual court shall think fit, until such infant shall have attained the age of twenty-one; when, and not before, probate of the will shall be granted him.

An executor derives his authority from the will and not from the probate, and is therefore authorized to do many acts in execution of the will, even before it is proved, such as releasing, paying, or receiving of debts, assenting to licences, &c. but he cannot proceed until he have obtained probate.

If an executor die before probate, administration must be taken out with the will annexed; but if an executor die, his executor, will be executor to the first testator, and no fresh probate will be needed. It will be sufficient if one only of the executors prove the will; but if all refuse to prove, they cannot afterwards administer, or in any respect act as executors.

If an executor become a bankrupt, the court of chancery will appoint a receiver of the testator's effects, as it will also upon the application of a creditor, if he appear to be wasting the assets.

If an executor once administer, he cannot afterwards renounce; and the ordinary may in such case, issue process to compel him to prove the will. 1 Mod. 213.

If an executor refuse to take upon him the execution of the will, he shall lose the legacy therein contained.

If a creditor constitute his debtor his executor, this is at law a discharge of the debt, whether the executor act or not, provided however, there be assets sufficient to discharge the debts of the testator.

The first duty of an executor or administrator is to bury the deceased in a suitable manner; and if the executor exceed what is necessary in this respect, it will be a waste of the substance of the testator.

The next thing to be done by the executor, is to prove the will, which may be done either in the common form, by taking the oath to make due distribution, &c. or in a more solemn mode, by witnesses to its execution.

By stat. 37 G. III. c. 9, s. 10, every person who shall admini-
nister the personal estate of any person dying without proving the will of the deceased, or taking out letters of administration within six calendar months after such person's decease, shall forfeit 50l.

Upon proving the will, the original is to be deposited in the registry of the ordinary, by whom a copy is made upon parchment under his seal, and delivered to the executor or administrator, together with a certificate of its having been proved before him, and this is termed the probate.

If all the goods of the deceased lie within the same jurisdiction, the probate is to be made before the ordinary or bishop of the diocese, where the deceased resided; but if he had goods and chattels to the value of 5l. in two distinct dioceses or jurisdictions, the will may be proved before the metropolitan or archbishop of the province in which the deceased died.

An executor, by virtue of the will of the testator, has an interest in all the goods and chattels, whether real or personal, in possession or in action of the deceased; and all goods and effects coming to his hands will be the assets to make him chargeable to creditors and legatees.

An executor or administrator, stands personally responsible for the due discharge of his duty; if, therefore the property of the deceased be lost, or through his wilful negligence become otherwise irrecoverable, he will be liable to make it good; and also where he retains money in his hands longer than is necessary, he will be chargeable not only with interest but costs, if any have been incurred.

But one executor shall not be answerable for money received, or detriment occasioned by the other, unless it have been by some act done between them jointly.

An executor or administrator, has the same remedy for recovering debts and duties, as the deceased would have had if living.

Neither an executor or administrator can maintain any action for a personal injury done to the deceased, when such injury is of such a nature for which damages may be received; in actions however, which have their origin in breach of promise, although the suit may abate by the death of the party, yet it may be revived either by his executors or administrators, who may also sue for rent in arrear, and due to the deceased in his life time.
By the custom of merchants, an executor or administrator may indorse over a bill of exchange, or promissory note.

An executor or administrator may also, on the death of a lessee for years, assign over the lease, and shall not be answerable for rent after such assignment, nor shall he be liable for rent due after the lessee's death, from premises which in his life time he had assigned to another.

An executor or administrator, is bound only by such covenants in a lease, as are said to run with the land.

The executor or administrator, previous to the distribution of the property of the deceased, must take an inventory of all his goods and chattels, which must, if required, be delivered to the ordinary upon oath.

He must then collect, with all possible convenience, all the goods and effects contained in such an inventory; and whatever is so recovered that is of a saleable nature, and can be converted into money, is termed assets, and makes him responsible to such amount to the creditors, legatees, and kindred of the deceased.

The executor or administrator, having collected in the property, is to proceed to discharge the debts of the deceased, which he must do according to the following priorities, otherwise he will be personally responsible.

1. Funeral expenses, charges of proving the will, and other expenditures incurred by the execution of his trust.
2. Debts due to the king on record, or by speciality.
3. Debts due by particular statutes, as by 30 C. II. c. 23. Forfeitures for not burying in woollen, money due for poor-rates, and money due to the post-office.
4. Debts of record, as judgments, statutes, recognizances, and those recognized by a decree of a court of equity: and debts due on mortgage. 3 Peere Wms, 401.
5. Debts on special contract, as bonds or other instruments under seal, and also rent in arrear.
6. Debts on simple contract, viz. such as debts arising by mere verbal promise, or by writing not under seal, as notes of hand, servants' wages, &c.

The executor is bound at his peril to take notice of debts on record, but not of other special contracts, unless he receives notice.
If no suit be actually commenced against an executor or administrator, he may pay one creditor in equal degree the whole debt, though there should be insufficient remaining to pay the rest, and even after the commencement of a suit, he may by confessing judgment to other creditors of the same degree, give them a preference.

Executors and administrators are also allowed, amongst debts of equal degree, to pay themselves first, but they are not allowed to retain their own debt, to the prejudice of others in a higher degree; neither shall they be permitted to retain their own debts, in preference to that of their co-executor or co-administrator of equal degree, but both shall be charged in equal proportion.

A mortgage made by the testator must be discharged by the representative out of the personal estate, if there be sufficient to pay the rest of the creditors and legatees. Where such mortgage, however, was not incurred by the deceased, it is not payable out of the personal estate. See Legacies and Assets.

EXECUTORY ESTATE, estates executed, are when they pass presently to the person to whom conveyed, without any after-act. 2 Inst. 513, and leases for years, rents, annuities, conditions, &c. are called inheritances executory. Id. 293.

EXECUTORY DEVISE, is defined a future interest, which cannot vest at the death of a testator, but depends upon some contingency which must happen before it can vest. Abr. Eq. 136.

An executory devise differs from a remainder, in three very material points: 1. that it needs not any particular estate to support it. 2. That by it a fee-simple, or other less estate, may be limited after a fee-simple. 3. That hereby a remainder may be limited of a chattel interest, after a particular estate for life created in the same. 2 Black, 172.

Executory devises of terms for years. If a farmer devise his term to A. for life, the remainder to another, though A. have the whole estate (for that is in him during his life) and so no remainder can be limited over, at common law, yet is good by way of executory devise. 1 Rol. Abr. 610.

EXEMPLIFICATION OF LETTERS PATENT, a copy or duplicate of letters patent made from the enrollment thereof, and sealed with the great seal of England, which exemplifications, are
as effectual to be shewn or pleaded, as the originals themselves. See Evidence.

EXEMPTION, a privilege to be free from service or appearance. See Privilege.

EX GRAVI QUERELA, a writ that lies for him, to whom any lands or tenements in fee, within a city, town, or borough, are devised by will, and the heir of the devisor enters into them, and detains them from him. Reg. Orig. 244.

EXHIBIT, when a deed, acquittance, or other writing, is in a chancery suit, exhibited to be proved by witnesses, and the examiner writes on the back, that it was shewn to such an one at the time of his examination; this is there called an exhibit.

EXIGENT, a writ that lies where the defendant in an action personal cannot be found, nor any thing within that county, whereby he may be attached or distrained; and is directed to the sheriff, to proclaim and call him, five county court days one after another, charging him to appear on pain of outlawry; and if he come not at the last day's proclamation, he is said to be quinquies exactus (five times exacted) and then is outlawed.

This writ, lies also in an indictment of felony, where the party indicted cannot be found.

EXIGENTER, is an officer of the court of common pleas, of whom there are four in number: they make exigents and proclamations in all actions where process of outlawry lies.

EXILE, is either voluntary as where a man leaves his country upon disgust, or by restraint, as when forbidden by government. See Punishment.

EXILIUM, is spoken of in our old law books, in reference to tenants or villains being injuriously driven out, or exiled from their tenements.

EX MERO MOTU, words formally used in the king's charter, to signify that he grants them of his own will and mere motion, without petition or suggestion made by any other; and the effect of these words, are to bar all exceptions, that might be taken to the charters, &c. by alleging that the king in granting them, was abused by any false suggestion.

EX OFFICIO, is so called from the power which an officer hath, by virtue of his office, to do certain acts without being particularly applied to; as, a justice of the peace may not only grant
surety of the peace at the complaint or request of any person, but
he may in several instances, demand and take it ex officio.

EXONERATIONE SECTÆ, is a writ that lay for the king's
ward, to be disburthened of all suit, &c. to the county, hundred,
feet, or court baron, during the time of his wardship.

EXPARTE, of one part, as in the court of chancery, a com-
mission ex-parte, is that which is taken out and executed by one
party only; the other party neglecting or refusing to join.

EXPARTE TALIS, a writ that lies for a bailiff, or receiver,
who having auditors assigned to take his account, cannot obtain
of them reasonable allowance, but is cast into prison by them.

F. N. B. 129.

EXPECTANT, is used in common law with the word fee, and
then is opposite to fee-simple. For example, lands are given to a
man and his wife in frank-marriage to have and to hold to them
and their heirs; in this case, they have fee-simple; but if it be
given to them, and the heirs of their body, &c. they have tail, and
fee expectant. Kitchin, 153.

EXPECTANCY, signifies having relation or dependance up-
on something future. See Expectant.

EXPEDITATE, in the forest laws, signifies to cut out the ball
of dogs fore feet, for the preservation of the king's game. And
every one who keeps a great dog not expeditated, forfeits three
shillings and four-pence to the king. 4 Inst. 306.

EXPENDITORS, the stewards or sworn-officers, who super-
vise the repair of the banks and water-courses in Romney Marsh.

EXPENSIS MILITUM LEVANDIS, an ancient writ directed
to the sheriff for levying the allowance for knights of the parlia-
ment.

EXPENSIS MILITUM NON LEVANDIS, a writ to prohi-
bit the sheriff from levying any allowance for knights of the
shire, upon those that hold in ancient demesne.

EXPORTATION, the shipping or carrying out the native com-
ommodities of England, to other countries.

The law, relative to exports, consists principally of prohibitory
or restorative regulations with respect to bullion, corn, wool,
tools, raw materials for manufacturing, machinery, &c. the ex-
portation of which might diminish the necessary supply of provi-
sions
sions at home, or enable foreigners to depreciate the wealth of the country, by impairing its manufactures.

EXPOSITION OF DEEDS, in the construction of deeds, it must be considered, how a deed in the gross shall be taken and enure; and how it shall be taken and expounded in the several parts and pieces of it. If several join in a deed, and some are able to make such a deed, and some are not, this shall be said to be the deed of those alone who are able. And so e converso, if a deed be made to one that is incapable, and to others that are capable, in this case, it shall enure only to him that is capable. Co. Lit. 302.

EXPOSITION OF WORDS AND SENTENCES. Words and sentences, that may be employed to some intent, shall never be void: and words tending to enlargement, shall not be construed restraint of a former clause. L. Raym. 269.

EX POST FACTO, a term in law signifying something done after another thing done, that was committed before.

EXTEND, signifies in a legal sense, to value the lands or tenements of one bound by statute, &c. (that hath forfeited his bond) at such an indifferent rate, as by the yearly rent the creditor in time be paid his debt.

EXTENT, sometimes means a writ or commission to the sheriff, for the valuing of lands or tenements; sometimes the act of the sheriff upon this writ.

EXTINGUISHMENT, wherever a right, title, or interest is destroyed, or taken away by the act of God, operation of law, or act of the party; this is called an extinguisment.

Of the extinguisment of rents, if a lessor purchase the tenancy from his lessee, he cannot have both the rent and the land, nor can the tenant be under any obligation to pay the rent, when the land which was the consideration thereof, is returned by the lessor into his own hands; and this resumption or purchase of the tenancy, makes what is properly called an extinguisment of the rent.

Of the extinguisment of copy-holds. As to the extinguisment of copyholds, it is laid down as a general rule; that any act of the copyholder, which denotes his intention to hold no longer of his lord, amounting to a determination of his will, is an extinguisment of his copyhold. Hutt. 81.
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Of the extinguishment of common, if a commoner release his common in one acre, it is an extinguishment of the whole common. 3 How. 350.

Of the extinguishment of debts. A creditor's accepting an higher security than he had before, is an extinguishment of the first debt; as if a creditor by simple contract accept an obligation, this extinguishes the simple contract debt. 1 Rol. Abr. 470 and 471.

EXTINGUISHMENT OF SERVICES. The lord purchases or accepts parcel of the tenancy, out of which an entire service is to be paid or done: by this the whole service will be extinct: but if the service be pro bono publico, then no part of it shall be extinguished; and homage and fealty are not subject to extinguishment, by the lord's purchasing part of the land. 6 Rep. 105.

EXTINGUISHMENT OF WAYS, if a man have an highway as appendant, and after purchase the land wherein this way is, the way is extinct. Though a way of necessity, to market, or to church, or to arable land, &c. is not extinguished by purchase of grounds, or unity of possession. 1 Inst. 155.

EXTORTION, signifies any oppression by colour or pretence of right, and in this respect it is said to be more heinous than robbery itself, as also that it is usually attended with the aggravating sin of perjury. Co. Lit. 368.

At common law, extortion is severely punishable at the king's suit, by fine and imprisonment, and by a removal from the office in the execution whereof it was committed. 31 Eliz. c. 5. And this statute adds a greater penalty than the common law gave; for hereby the plaintiff shall recover his double damages. 2 Inst. 210. See Colour of Office.

EXTRA-JUDICIAL, is when judgment is given in a cause or case not depending in that court, where such judgment is given, or wherein the judge has no jurisdiction.

EXTRA-PAROCHIAL, out of any parish; privileged or exempted from the duties of a parish.

If a place be extra-parochial, and have not the face of a parish, the justices have no authority to send any poor person thither; possibly a place extra-parochial may be taxed in aid of a parish, but a parish shall not in aid of that. 2 Salk. 486.

If a place be a reputed parish, and have churchwardens and overseers
FACTOR. A factor is a merchants' agent or correspondent residing beyond the seas, or in any remote parts of the country, and in some cases, constitutes by letter of attorney to sell goods and merchandize, and otherwise act for his principal, either with a stipulated salary or allowance for his care, or commission. He must pursue his orders strictly, and may be concerned for several merchants. In commissions granted to factors, &c. it is customary to give them an authority in express words to dispose of the merchandize, and deal therein as if it were their own, by which the factor's actions will be excused, though they occasion loss to their principals. Goods remitted to a factor, ought to be carefully preserved; and he is accountable for all lawful goods which shall be consigned and come to his hands; yet if the factor buy goods for his principal, and they receive damage in his possession, through no negligence of his, the principal shall bear the loss; and if a factor be robbed, he shall be discharged in account brought against him by his principal. If a factor act contrary to his orders in selling goods, he is liable for the loss accrued therein, and shall answer to his principal out of his own estate. No factor acting on another man's account, can justify seceding from the orders of his principal, though there may be a probability of advantage by it. If a principal give orders to his factor, that he shall make an insurance on his ship and goods as soon as laden, and having money in his hands, he neglects to make such insurance;
if the ship be lost, &c. the factor shall answer for it; so, if a factor make any composition with the insurers, after he hath insured the goods, without order or commission from his principal, he is answerable for the loss.

FACTORAGE, the wages or allowance paid and made to a factor by the merchant. The gain of factorage is certain, however the success proves to the merchant; but the commissions and allowances vary, according to the customs and distance of the country, in the several places where factors are resident, and are often from about two to seven or eight per cent. Lex. Mercat. 155.

FACULTY, is used for a privilege, or special power granted to a man by favor, such as to hold two or more ecclesiastical livings and the like. And for granting these, there is an especial court under the archbishop of Canterbury, called the Court of the Faculties, and the chief officer thereof, the Master of the Faculties, whose power to grant such dispensations was given by 25 H. VIII. c. 21.

FAILURE OF RECORD, is where an action is brought against a man, who alledges in his plea matter of record, in bar of the action, and avers to prove it by the record; but the plaintiff saith, nulliessential record, viz. denies there is any such record: upon which the defendant hath day given him by the court to bring it in; and if he fail to do it, then he is said to fail of his record, and the plaintiff shall have judgment to recover.

FAINT ACTION, a feigned action, or such action, as, although the words of the writ be true, yet for certain causes a man has no title to recover thereby.

FAIRS AND MARKETS, were instituted for the better regulation of trade and commerce, and that merchants and traders may be furnished with such commodities as they want, at a particular mart, without that trouble and loss of time, which must necessarily attend travelling about from place to place; and therefore as this is a matter of universal concern to the commonwealth so it hath always been held, that no person can claim a fair or market, unless it be by grant from the king, or by prescription which supposes such grant. 2 Inst. 220.

Owners and governors of fairs are to take care that every thing be sold according to just weight and measure, and for that and other purposes may appoint a clerk of the fair or market, who
is to mark and allow such weights, and for his duty herein can only take his reasonable and just fees. 4 Inst. 274. See Clerk of the Market, and Court of pie poudre.

Toll is a matter of private benefit to the owner of the fair or market, and not incident to it; therefore if the king grant a fair or market, and grant no toll, the patentee can have none, and such fair or market is counted a free fair or market. 2 Inst. 220.

No toll shall be paid for any thing brought to a fair or market, before the same is sold, unless it be by custom time out of mind, and upon such sale, the toll is to be paid by the buyer. 2 Inst. 221.

Goods in a fair or market cannot be distrained for rent, for they are brought thither for the good of the public: but if they are driving to market, and by the way are put into a pasture, it is otherwise. Wood. b. 2, c. 2.

Generally, all sales and contracts of all things vendible in fairs or open markets, shall be good not only between the parties, but also binding on all those that have any right or property therein. 2 Black. 449.

FAIT, a deed or writing sealed and delivered to prove and testify the agreement of the parties, whose deed it is; and consists of three principal points, writing, sealing, and delivery. By writing, are shewn the parties names to the deed, their dwelling places, degrees, things granted, upon what consideration, the estate limited, the time when granted, and whether simply, or upon condition.

Sealing, is a farther testimony of their consents, and delivery, though last, is not the least important; for after a deed is written and sealed, if it be not delivered, it is to no purpose: and in all deeds, care must be taken that the delivery be well proved. See Deeds.

FALKLAND. See Freehold.

FALSE ACTION, if an action be brought against any one whereby he is cast into prison, and dies pending the suit, the law gives no remedy; because the truth or falsehood of the matter, cannot appear before it is tried. And if the plaintiff be barred or non-suited at common law, regularly, all the punishment is a merce. Jenk. Cent. 161.

But if a bailable action be commenced against another, and he
is held to bail thereon, either without a reasonable cause, or for something considerably more than what is bonafide due, an action upon the case will lie for the vexation and injury.

FALSE CHARACTER. See Character.

FALSE IMPRISONMENT. To constitute the injury of false imprisonment, two points are necessary: the detention of the person, and the unlawfulness of such detention. Every confinement of the person is imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the streets. 2 Inst. 589.

By magna charta, no freeman shall be taken and imprisoned, but by the lawful judgment of his equals, or by the law of the land: and by the petition of right, 3 C. I. no freeman shall be imprisoned or detained without cause shewn, to which he may make answer according to law. And by the 16 C. I. c. 10, if any person be restrained of his liberty, he may, upon application by his counsel, have a writ of habeas corpus, to bring him before the court of king's bench or common pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice doth appertain.

For false imprisonment, the law hath not only decreed a punishment by fine and imprisonment, as a heinous public crime, but hath also given a private reparation to the party by action at law, wherein he shall recover damages for the loss of his time and liberty. 3 Black, 127.

FALSE JUDGMENT. A writ of false judgment lies, where false judgment is given in the county court, or other court which is not a court of record, in a plea real or personal, and returnable into the court of common pleas.

FALSE LATIN. Before the statute directing law proceedings to be in English, if a Latin word were significant, though not good Latin, yet an indictment, declaration, or fine, should not be made void by it.

FALSE NEWS, slanderous to the king, or to make discord between the king and nobility, &c. to be punishable by imprisonment. 3 Edw. I. c. 34.

FALSE OATH. If a person take a false oath, he is punishable for it by action on the case if it be not perjury for which he may be indicted; for there is a difference between a false oath and
and perjury; for one is judicial, the other is extra-judicial. And the law inflicts greater punishment for a false oath made in a court of justice than elsewhere, because of the preservation of justice. Str. 337.

FALSE PLEA. See Pleading.

FALSIFYING A RECORD. It is held, that he who purchases land of a person, who afterwards is outlawed of felony, or condemned upon his own confession, may falsify the record, not only as to the time wherein the felony is supposed to have been committed, but also as to the point of the offence. But it is agreed, that where a man is found guilty by verdict, a purchaser cannot falsify as to the point of the offence, though he may falsify for the time, where the party is found guilty generally of the offence in the appeal or indictment, because the time is not material upon evidence. 2 Haw. 459.

FALSIFYING A RECOVERY. Issue in tail may falsify a recovery, suffered by tenants for life, &c. And it has been held that a person may falsify a recovery had by the issue in tail, where an estate tail is before bound by a fine. 2 Nels. Abr. 831.

FALSIFYING A VERDICT, where there is a verdict against tenant in tail, in real action, the issue can never falsify such verdict in the point directly tried; but only in a special manner, as by saying that some evidence was omitted, &c. 2 L. Raym. 1050.

FARLEY or FARLEU, in some manors in the west of England, they distinguish farley or farleu as the best of the goods, as Heriot is the best beast, payable at the tenant's death.

FARM. By stat. 21 H. VIII. c. 13, no parson, or spiritual person may take, farms or leases of lands, on pain of forfeiting 10l. per month.

FATHER AND SON. The father shall not have action for taking any of his children, except his heir; and that is, because the marriage of his heir belongs to the father; but not of any other of his sons or daughters. And the father has no property or interest in the other children, which the law accounts may be taken from him. Cro. Eliz. 770.

The father is obliged by the common law to provide for his children. Lord Raym. 41.
Justices cannot order a maintenance for a child to be paid by
the father, without adjudging that the child is poor, or likely to
become chargeable. Id. 669.

FEALTY, signifies an oath taken at the admittance of every
tenant, to be true to the lord, of whom he holds his land: and
he that holds land by this oath only, holds in a manner the more
perfectly free, than any in England under the king may hold.
The oath is now neglected in many places, but it is yet un­
doubtedly in force. 1 & 2 Bluck. 366. & 86.

FEASTS, the four feasts which our law especially takes notice
of, are the feasts of the announcement of the blessed Virgin Mary;
of the nativity of St. John the Baptist, of St. Michael the Arch­
angel, and of St. Thomas the Apostle, or in lieu thereof Christmas Day; on which quarterly days, rent on leases is usually re­served to be paid.

FEES, all our land here in England (the crown-lands being in
the king's own hands, in right of his crown, excepted) is in the
nature of feudum or fee; for though many have land by descent
from their ancestors, and others have clearly purchased land with
their money, yet is the land of such a nature, that it cannot come
to any, either by descent or purchase, but with the burthen that
was laid upon him who had novel fee, or first of all received it as
a benefit from his lord to him, and to all such to whom it might
descend, or any way be conveyed from him; so that in truth, no
man hath directum dominum, the very property or demesne in
any land, but only the prince in right of his crown. Cum. Brit.
93.

FEES SIMPLE, is an estate of inheritance whereby a person
is seised of lands, tenements, or hereditaments, to hold him and
his heirs for ever, generally, absolutely, and entirely; without
mentioning what heirs, but referring that to his own pleasure, or
to the disposition of the law. It is the most perfect tenure of any,
when unincumbered; but although the greatest interests which
by our law, a subject can possess; yet it may be forfeited for
treason or felony. To constitute an estate in fee, or of inheritance,
the word heir is necessary in the grant or donation. Co. Lit. 1.
Plowd. 498. 2 Bluck. 48.

Fees qualified, is such a freehold estate, as has a qualification
subjoined
subjoined to it, and which therefore must determine whenever
the qualification is at an end. Co. Lit. 27.

Fee conditional. This estate was at the common law, a fee re-
strained to some particular heirs exclusive of others; as to the
heirs of a man’s body, or to the heirs male of his body, in which
cases it was held, that as soon as the grantee had issue born, the
estate was thereby converted into fee simple, at least so far as to
enable him to sell it, to forfeit it by treason, or to charge it with
incumbrances. But the statute de donis having enacted, that
such estates so given, to a man, and the heirs of his body, should
at all events go to the issue, if there were any, or if none, should
revert to the donor; this was by the judges denominated an estate
in tail. Plowd. 251. See Estate.

FEE FARM, is, when the lord, upon the creation of the
tenancy, reserves to himself and his heirs, either the rent for
which it was before let to farm, or at least a fourth part of that
farm rent.

FEE FARM RENT, so called, because a farm rent is reserved
upon a grant in fee.

FEES, are certain perquisites, allowed to officers in the admin-
istration of justice, as a recompence for their labour and trouble;
and these are either ascertained by acts of parliament, or estab-
lished by ancient usage, which gives them an equal sanction with

FEIGNED ACTION. See Faint Action

FEIGNED ISSUE, is that whereby an action is feigned to be
brought by consent of the parties, to determine some disputed
right; without the formality of pleading, and thereby to save
much time and expence in the decision of a cause. 3 Black. 452.

FELO DE SE, a felon of himself, is a person who being of
sound mind, and of the age of discretion, voluntarily kills him-
self; for if a person be insane at the time, it is no crime. But
this ought not to be extended so far as the coroners juries some-
times carry it, who suppose that the very act of self-murder is an
evidence of insanity; as if every man who acts contrary to rea-
son had no reason at all; for the same argument would prove
every other criminal non compos, as well as the self-murderer.
3 Inst. 54.

All inquisitions of the offence, being in the nature of indict-
ments
ments, ought particularly and certainly to set forth the circumstances of the fact; as the particular manner of the wound, and that it was mortal, &c. and in conclusion add, that the party in such manner murdered himself. 1 Salk. 377.

A *felo de se*, forfeits all chattels real and personal, which he hath in his own right, and also all such chattels real whereof he is possessed, either jointly with his wife, or in her right; and also all bonds, and other personal things in action, belonging solely to himself; and also all personal things in possession, to which he was entitled jointly with another, or any account, except that of merchandize; but it is said that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing at all of what he was possessed of as executor or administrator. *Stamf.* P. C. 138. 189. *Plow.* 243. 262. 3 Inst. 55.

**FELONS GOODS**, are not forfeited, till it is found by indictment that he fled for the felony, and therefore they cannot be claimed by prescription. See *Estrays and Waifs*.

**FELONY**, in the general acceptance of law, comprises every species of crime which occasioned at common law the forfeiture of lands or goods. This most frequently happens in those for which a capital punishment either was or is liable to be inflicted: for those felonies which are called clergyble, or to which the benefit of clergy extends, were anciently punished with death in lay or unlearned offenders; though now by the statute law, that punishment is for the first offence universally remitted.

*Felony* is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door to execute a warrant, which will not justify such a proceeding. But the bare intention to commit a felony, is so very criminal, that at the common law it was punishable as felony, where it missed its effect through some accident, which no way lessened the guilt of the offender: but it seems agreed at this day, that felony shall not be imputed to a bare intention to commit it, yet it is certain that the party may be very severely fined for such an intention. 1 *Haw.* 65.

The punishment of a person for felony, by our ancient books is 1st, to lose his life; 2ndly, to lose his blood, as to his ancestry, and so to have neither heir nor posterity; 3dly, to lose his goods; 4thly
4thly, to lose his lands, and the king shall have year, day and waste, to the intent that his wife and children be cast out of the house, his house pulled down, and all that he had for his comfort and delight destroyed. 4 Rep. 124. A felony by statute incidentally implies, that the offender shall be subject to the like attainder and forfeiture, &c. as is incident to a felon at common law. 3 Inst. 47. See Burglary, Forgery, Homicide, Petit Trea-
sion, Rape, Robbery, &c.

FELONY UNDER COLOUR OF LAW, such is coming into an house by colour of writ of execution, and carrying away the goods.

A special trust prevents the felony, until such special trust is determined. 8 Mod. 76.

FEME COVERT, a married woman, so called from being under the cover, protection, and influence, of her husband. See Husband and Wife.

FEME SOLE, a single or unmarried woman; a feme sole is liable to perform parish offices, the act only requiring the person to be a substantial householder, without reference to sex.

FEME SOLE TRADER, a married woman, who, by the custom of London, trades on her own account, independent of her husband. See Bankruptcy.

FENCE, where a hedge and ditch join together, in whose ground or side the ditch is, to the owner of that land belongs the keeping of the same hedge or fence, and the ditch belonging to it on the other side in repair and scoured. P. Off. 188.

An action on the case or trespass, lies for not repairing fences, whereby cattle come into the ground of another, and do damage. Also it is presentable in the court baron. 1 Salk. 335.

FENCE MONTH, a month wherein it is unlawful to hunt in the forest, because the female deer fawn in that time. It being always according to the charter of the forest, fifteen days before, and ending fifteen days after midsummer.

FENS, any person convicted of maliciously cutting or destroying any bank, mill, engine, floodgate, or sluice for draining fens, shall be guilty of felony without benefit of clergy. 27 Geo. II. c. 19.

FEOD or FEUD, a right which the vassal hath in land, of some immoveable thing of his lord's, to use the same, and take
the profits thereof hereditarily; rendering to his lord such feudal duties and services as belong to military tenure; the mere propriety of the soil always remaining unto the lord. See Fee.

FEODATORY, the tenant who held his estate by feudal service.

FEOFFMENT, may be defined to be the gift of any corporeal hereditament to another. He that so gives or enfeoffs, is called the feoffor; and the person enfeoffed is denominated the feoffee. 2 Black. 20.

But by the mere words of the deed, the feoffment is by no means perfected. There remains a very material ceremony to be performed, called livery of seisin; without which, the feoffee hath but a mere estate at will. Id.

The end and design of this institution was, by this sort of ceremony or solemnity, to give notice of the translation of the feud from one hand to another; because if the possession might be changed by the private agreement of the parties, such secret contracts would make it difficult and uncertain to discover in whom the estate was lodged, and consequently the lord would be at a loss of whom to demand his services; and strangers equally perplexed, to discover against whom to commence their actions for the prosecution and recovery of their right; to prevent therefore this uncertainty, the ceremony of livery and seisin was instituted. 2 Bac. Abr. 482.

Of the several sorts of livery. The livery in deed, is the actual tradition of the land, and is made either by the delivery of a branch of a tree or a turf of the land, or some other thing, in the name of all the lands and tenements contained in the deed; and it may be made by words only, without the delivery of any thing; as if the feoffor upon the land, or at the door of the house, says to the feoffee, I am content that you should enjoy this land according to the deed, this is a good livery to pass the freehold. Co. Lit. 48. a.

The livery within view, or the livery in law, is when the feoffor is not actually on the land, or in the house, but being in sight of it, says to the feoffee, I give you yonder house, or land, go and enter into the same and take possession of it accordingly; this livery in law cannot be given or received by an attorney, but only by the parties themselves. Pellex. 47.
But this sort of livery is not perfect to carry the freehold, till an actual entry made by the feoffee, because the possession is not actually delivered to him, but only a licence or power given him by the feoffor to take possession of it; and therefore if either the feoffor or feoffee die before livery, and entry made by the feoffee, the livery within the view becomes ineffectual and void; for if the feoffor die before entry, the feoffee cannot afterwards enter, because the land immediately descends upon his heir, and consequently no person can take possession of his land without an authority delegated from him who is the proprietor; nor can the heir of the feoffee enter, because he is not the person to whom the feoffor intended to convey his land, nor had he an authority from the feoffor to take the possession; besides if the heir of the feoffee were admitted to take possession after his father's death, he would come in as a purchaser, whereas he was mentioned in the feoffment, to take as the representative of his ancestor, which he cannot do, since the estate was never vested in his ancestor. *Co. Lit. 48 b.*

A feoffment, cannot he made of a thing of which livery cannot be given, as of incorporeal inheritances, such as rent, advowson, common, &c. *2 Rol. 1. l. 20.* Though it be an advowson, &c. in gross. *21 Id.*

A man may either give or receive livery in deed, by letter of attorney; for since a contract is no more than the consent of a man's mind to a thing, where that consent or concurrence appears, it were most unreasonable to oblige each person to be present at the execution of the contract, since it may as well be performed by any other person delegated for that purpose, by the parties to the contract. *Co. Lit. 52.*

There are few or no persons excluded from exercising this power of delivering seisin, for monks, infants, feme covert, persons attainted, outlawed, excommunicated, villains, aliens, &c. may be attornies; for this being only a naked authority, the execution of it can be attended with no manner of prejudice to the persons under these incapacities or disabilities, or to any other person, who by law may claim any interest of such disabled persons after their death. *Co. Lit. 52. a.* See *Fine.*

FEOFF FOR AND FEOFFEE, feoffor, he who infeoffs, or makes a feoffment.
a feoffment to another of lands or tenements in fee simple. And feoffee is the person infeoffed, or to whom the feoffment is made. See Feoffment.

FERÆ NATURÆ, animals, ferae naturæ, of a wild nature, are those in which a man hath not an absolute, but only a qualified and limited property, which sometimes subsists, and at other times doth not subsist. And this qualified property is obtained either by the art and industry of man, or the impotence of the animals themselves, or by special privilege.

A qualified property may subsist in animals, ferae naturæ, by the art and industry of man, either by his reclaiming and making them tame, or by so confining them that they cannot escape and use their natural liberty; such as deer in a park, hares or conies in an enclosed warren, doves in a dove-house, pheasants or partridges in a mew, hawks that are fed and commanded by the owner, and fish in a private pond, or in trunks. These are no longer the property of a man, than while they continue in his keeping, or actual possession; but if at any time they regain their natural liberty, his property instantly ceases; unless they have animum revertendi, which is only to be known by their usual custom of returning.

A man may have a qualified property in animals, ferae naturæ, by special privilege; that is, he may have the privilege, of hunting, taking and killing them, in exclusion of other persons. Under which head may be considered, all those animals which come under the denomination of game. Here a man may have a transient property in these animals, so long as they continue within his liberty, and may restrain any strangers from taking them therein: but the instant they depart into another liberty, this qualified property ceases. 2 Black. 391.

Larceny cannot be committed of things ferae naturæ, while at their natural liberty; but if they are made fit for food, and reduced to tameness, and known by the taker to be so, it may be larceny to take them. 1 Haw. 94. See Game.

FERRY, is a liberty by prescription, or the king's grant, to have a boat for passage upon a river, for carriage of horses and men, for reasonable toll. Savil. 11 & 14.

Owner of a ferry cannot suppress that ferry, and put up a bridge in its place without a licence. Show. 243. 257.
And if a ferry be granted at this day, he who accepts such grant, is bound to keep a boat for the public good. *Id.*

FEUDAL BARONIES, *feudal baronies* were, when the king in the creation of baronies, gave rent and land to hold of him for the defence of the realm. There is no feudal barony remaining at this time, except Arundel. 1 Salk. 353.

FEUD BOTE, a recompense for engaging in a feud or faction, and the contingent damages; it having been the custom of ancient times, for all the kindred to engage in the kinsman's quarrel.

FEUDS, estates in lands were originally at will, and then they were called *manna*; afterwards they were for life, and then they were called *beneficia*; and for that reason the livings of clergy men are so called at this day; afterwards they were made hereditary, when they were called *feoda*, and in our law *fee simple*. See *Fee Simple*. 3 Salk. 165.

FIAT, a short order or warrant of some judge, for making out and allowing certain processes.

FIAT JUSTICIA, on a petition to the king, for his warrant to bring a writ of error in parliament, he writes on the top of the petition, *fiat justicia*, and then the writ of error is made out, &c. Staundf. Prarog. Reg. 22.

FICTION OF LAW, is allowed of in several cases, but it must be framed according to the rules of law; and there ought to be equity and possibility in every legal fiction.

*Fictions*, were invented to avoid inconvenience; and it is a maxim invariably observed, that no fiction shall extend to work an injury; its proper operation being to prevent a mischief, or remedy an inconvenience, that might result from the general rule of law. 3 Black. 434.

All fictions of law, are to certain respects and purposes, and extend only to certain persons; as, the law supposes the vouchee to be tenant of the land, where *in rei veritate* he is not; but this is as to the demandant himself, and to enable him to do things as to the demandant, and which the demandant may do to him; and therefore a fine levied by vouchee to the demandant, or fine or release from the defendant to the vouchee, is good; but fine levied by the vouchee to a stranger, or lease made to him by a stranger is void. 3 Rep. 29.
FIERI FACIAS, a writ judicial, that lies at all times within the
year and day, for him who hath recovered in an action of debt
or damages, to the sheriff, to command him to levy the debt or
damages, of his goods against whom the recovery was had.

Upon a fieri facias, the sheriff cannot deliver the defendant's
goods to the plaintiff in satisfaction of his debt; nor ought he to
deliver them to the defendant against whom execution is; but the
goods are to be sold, and in strictness, the money is to be brought
into court. Cro. Eliz. 504.

If the defendant die after the execution awarded, and before it
be served, yet it may be served upon his goods in the hands of
his executor or administrator; for if the execution be awarded,
the goods are bound, and the sheriff need not take notice of his
death. 1 Mod. 188.

And upon a fieri facias, the sheriff may take any thing but
wearing cloaths. Cumb. 356.

FIGURES, figures are not allowed to express numbers in in-
dictments, but numbers must be expressed in words. Cro. Car.
109.

Roman figures are good in pleading, but otherwise of English
figures. 2 Lev. 102.

FILACER or FILIZER, an officer of the court of common-
pleas, so called because he files those writs, whereon he makes
out process. There are fourteen of them in their several divisions
and counties; and they make out all writs and processes upon
original writs, issuing out of chancery, as well in real, as in per-
sonal and mixed actions; and in actions merely personal, where
the defendants are returned summoned, they make out pones and
attachments, which being returned and executed, if the defendant
appear not, they make forth a distringas, and so ad infinitum, or
until he doth appear; if he be returned nihil, then process of
capias infinite, &c. They enter all appearances and special bails,
upon any process made by them. They make the first seire facias
upon special bails, writs of habeas corpus, distringas, nuper vice-
comitem vel ballivum, and duces tecum, and all super sedes upon
special bail or otherwise; writs of habeas corpus cum causa, upon
the sheriff's return, that the defendant is detained with other ac-
tions; writs of adjournment of a term, in case of pestilence, war,
or public disturbance.

FILE,
FILE, a file is a record of the court, and the filing of a process of court, makes a record of it. Lill. 212.

FINDING, any person finding any thing, has a special property therein, but he is answerable to the person in whom is the general property, but has a right against every person but the loser. The finder is not answerable for a mere nonfeasance or neglect; yet if he make gain or abuse, or spoil the things he finds, he shall be answerable.

If bank-bills, tickets, &c. stolen or lost, are paid to or delivered to another, without consideration, an action lies against any one in whose hands they are found; and the law seems to be the same, though a consideration were given, if the party had previous notice of their being lost or stolen. Str. 505.

But the property of goods found or stolen, may be changed by sale for a valuable consideration, and without notice, in a market overt, and the party purchasing them obtains a title to them, against the original owner.

FINE, a fine is sometimes said to be a feoffment of record, though it might with more accuracy, be called an acknowledgement of a feoffment on record: by which it is to be understood, that it hath at least, the same force and effect with a feoffment, in the conveying and assuring of lands; though it is one of those methods of transferring estates of freehold by the common law, in which livery of seisin is not necessary to be actually given: the supposition and acknowledgment thereof in a court of record, however fictitious, inducing an equal notoriety. But more particularly, a fine may be described to be, an amicable composition or agreement of a suit, either actual or fictitious, by leave of the king or his justices; whereby the lands in question become, or are acknowledged to be, the right of one of the parties. In its original, it was founded on an actual suit commenced at law, for the recovery of the possession thus gained by such composition, and was found to be so sure and effectual, that fictitious actions were, and continue to be, every day commenced, for the sake of obtaining the same security. 2 Black. 349.

Of the several kinds of fines. Fines are of four kinds, first, that which in law French is called a fine sur cognizance de droit come ceo q'il a de son done; or a fine upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. 2
This is the best and surest kind of fine, for thereby the deforciant, in order to keep his covenant with the plaintiff of conveying to him the lands in question, and at the same time to avoid the formality of an actual feeoffment and livery, acknowledges in a court a former feeoffment, or gift in possession, to have been made by him to the plaintiff. This fine is therefore said to be a feeoffment of record; the livery thus acknowledged in court, being equivalent to an actual livery; so that this assurance is rather a confession of a former conveyance, than a conveyance now originally made; for the deforciant or cognizor, acknowledges the right to be in the plaintiff or cognizee, as that which he hath de son done, of the proper gift of himself the cognizor.

Secondly, a fine, sur cognizance de droit tuntum, or upon acknowledgment of the right merely, not with the circumstance of a preceding gift from the cognizor. This is commonly used to pass a reversionary interest which is in the cognizor; for such reversions, there can be no feeoffment or donation with livery supposed; as the possession during the particular estate, belongs to a third person. Moor. 269.

Thirdly, a fine sur concessit, or upon grant, is, where the cognizor, in order to make an end of disputes, though he acknowledges no precedent right, yet grants to the cognizee an estate de novo, usually for life or years, by way of supposed composition; and this may be done reserving a rent, or the like; for it operates as a new grant.

Fourthly, a fine sur done, grant, et render; which is a double fine, being in a manner two fines, comprehending the fine sur cognizance de droit come ceo, &c. and the fine sur concessit; and may be used to create particular limitations of estate. In this species of fine, the cognizee, after the right is acknowledged to be in him, grants back again, or renders to the cognizor, or perhaps to a stranger, some other estate in the premises. But in general the first species of fine, sur cognizance de droit come ceo, &c. is more used, as it conveys a clear and absolute freehold, and gives the cognizee a seisin in law, without an actual livery; and is therefore called a fine executed, whereas the others are but executory. 2 Black. 352.

Operation of a fine levied. The force and effect of a fine principally depend on the common law, and the two statutes 4 H. VII. c. 24.
c. 24. and 32 H. VIII. c. 36. the ancient common law, with respect to this point, is forcibly declared by 18 Ed. I. c. 4. The fine is so high a bar, and of so great force, and of a nature so powerful in itself, that it precludes not only those which are parties and privies to the fine, and their heirs, but all other persons whatsoever who are of full age, out of prison, of sound memory, and within the four seas, on the day of the fine levied, unless they put in their claim within a year and a day, and by 4 H. VII. c. 241, five years after proclamation made.

A fine extends to parties, privies, and strangers; and the parties and privies are foreclosed by it presently, and the strangers in future. 2 Inst. 516.

The parties, are either the cognizors or cognizees; and these are immediately concluded by the fine, and barred of any latent right they might have, even though under the legal impediment of coverture. And indeed this is almost the only act that a *feme covert* is permitted by law to do (and that, because she is privately examined as to her voluntary consent, which removes the general suspicion of compulsion by her husband), it is therefore the usual, and almost the only safe method, whereby she can join in the sale, settlement, or incumbrance, of any estate.

Privies to a fine, are such as are any way related to the parties who levy the fine, and claim under them by any right of blood, or other right of representation: such as are the heirs general of the cognizor, the issue in tail, the vendee, the devisee, and all others who must make title by the persons who levied the fine. 2 Black. 353.

Strangers to a fine, are all other persons in the world, except only parties and privies; whose right is bound unless they make claim within five years after proclamation made, except *femes covert* (not being parties to the fine) infants, prisoners, persons beyond the seas, and such as are not of sound mind: who have five years allowed to them and their heirs, after such impediment removed.

Persons also, that have not a present, but a future interest only, as in remainder or reversion, have five years allowed to claim in, from the time that such right accrues. And if within that time they neglect to claim, or if they do not conformably to the statute 4 Anne. c. 16, bring an action to try the right, within
one year after making such claim, and prosecute the same with effect, all persons whatsoever, are barred of whatever right they may have, by force of the statute of non claim. *Id.*

And the courts of law will not suffer a fine to be impeached (when once levied) on account of any defect of understanding, or even lunacy or idiocy, of the cognizor. *12 Co. 124.*

But in order to make a fine of any avail, it is necessary that the parties have some interest in the lands to be affected by it; otherwise two strangers, by confederacy, might defray the owners, by levying fines of their lands.

For if the attempt be discovered, they can be no sufferers as to the estate in question, but must only remain in *status quo*; whereas if a tenant for life levy a fine, it is an absolute forfeiture of his estate to the remainder man or reversioner, if claimed in proper time. It is not therefore to be supposed that such tenants will often run so great a hazard; but if they do, and the claim is not duly made within five years after their respective terms expire, the estate is for ever barred by it. *Co. Lit. 251.*

Regularly a fine may be levied of any thing, whereof a praecipe quod reddat, or faciat lies, as the writ of customs and services: or whereof a praecipe quod permittant, as to have common, a way, &c. or to be short, where a praecipe quod tenet doth lie, as the writ of covenant to levy a fine, and the like. *2 Inst. 519.*

Fines are now levied in the court of common pleas at Westminster, on account of the solemnity thereof, ordained by 18 Ed. I. st. 4; before which time, they were sometimes levied in the exchequer, in the county courts, courts baron, &c. They may be acknowledged before the lord chief justice of the common pleas, as well in as out of court; and two of the justices of the same court have power to take them in open court: also justices of assise may do it by the general words of their patent or commission; but they do not usually certify them, without a special writ of dedimus potestatem. *2 Inst. 512.*

The chief justice of common pleas, may, by the prerogative of his place, take cognizance of fines in any place out of the court; and certify the same without any dedimus potestatem. But the chief justice of England cannot, nor any of the justices, except the chief justice of the common pleas, who hath this special authority by custom and not by statute, *9 Co. Read.* For further information
information respecting the levying of fines, &c. see Impey's C. B Practice.

FINES FOR ALIENATIONS, were fines paid to the king, by his tenants in chief, for permission to alien their lands, according to 1 Ed. III. c. 12. But these are taken away by stat. 12 C. II. c. 24, abolishing all tenures but free and common socage.

FINES FOR OFFENCES, originally all punishments were corporal; but after the use of money, when the profits of the courts arose from the money paid out of the civil causes, and the fines and confiscations in criminal ones, the commutation of punishments was allowed of, and the corporal punishment which was only in terraram, changed into the pecuniary, whereby they found their own advantage. This begat the distinction between the greater and the less offences; for in the crimina major there was at least a fine to the king, which was levied by a capiatur; but upon the less offences there was only an amercement, which was ascered, and for which a distingas, or action of debt only lay. 2 Bac. Abr. 502.

By the bill of rights 1 W. st. 2. c. 2. excessive fines ought not to be imposed; and all grants and promises of fines and forfeitures of particular persons, before conviction, are declared to be illegal and void. 4 Black. 379.

All courts of record, may fine and imprison an offender, if the nature of the offence be such as deserves such punishment. 3 Co. 59.

But no court, unless of record, can fine or imprison. 11 Co. 43. And all courts of law that have power given them to fine and imprison, are thereby made courts of record. 1 Salk. 200.

The sheriff in his turn, may impose a fine on all such as are guilty of any contempt in the face of the court, and may also impose what reasonable fine he shall think fitting, upon a suitor refusing to be sworn, or upon a bailiff refusing to make a panel, &c. or upon a tithing-man neglecting to make his presentment, or upon one of the jury refusing to present the articles whereas they are charged, or upon a person duly chosen constable, refusing to be sworn. 2 Inst. 112.

Also the steward of a court leet, may by recognizance bind any person to the peace who shall make an affray in his presence, fit-
ting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him; in which case he may afterwards impose a fine according to his discretion. F. N. B. 82.

Also the sheriff in his torn, and the steward of a court leet, have a discretionary power, either to award a fine or amercement for contempt of the court; for a suitor's refusing to be sworn, &c. and the steward of a court leet may either amerce or fine an offender, upon an indictment for an offence not capital, within his jurisdiction, without any farther proceeding or trial; especially if the crime were any way enormous, as an affray accompanied with wounding. Kitchin. 43, 51.

Some courts cannot fine or imprison, but amerce, as the county, hundred courts, &c. 11 Co. 43.

But some courts can neither fine, imprison, or amerce; as ecclesiastical courts held before the ordinary, archdeacon, &c. or their commissaries, and such who proceed according to the canon or civil law. 11 Co 44.

A fine may be mitigated the same term it was set, being under the power of the court during that time; but not afterwards. L. Raym. 376. And fines assessed in court by judgment upon an information, cannot be afterwards mitigated. Cro. Car. 251. If a fine certain is imposed by statute on any conviction, the court cannot mitigate it; but if the party come in before conviction, and submit to the court, they may assess a less fine; for he is not convicted, and perhaps never might. The court of exchequer may mitigate a fine certain, because it is a court of equity, and they have a privy seal for it. 3 Salk. 33.

FIRDWITE, a penalty imposed on military tenants for their defaults in not appearing in arms, or coming to an expedition.

FIRES and FIRECOCKS, by 11 G. III. c. 78, churchwardens in London, and within the bills of mortality, are to fix firecocks, &c. at proper distances in streets, and keep a large engine and hand engine for extinguishing fire, under the penalty of ten pounds. And to prevent fires, workmen in the city of London, &c. must erect party walls between buildings, of brick or stone of a certain thickness, &c. under penalties therein mentioned.

On the breaking out of any fire, all the constables and beadles, shall repair to the place with their staves, and be assisting in put-
ting it out, and causing people to work. No action shall be had against any person in whose house or chamber a fire shall accidently begin.

FIRE BOTE, an allowance of fuel or estovers, to maintain competent firing for the use of the tenants; which by the common law, any man may take out of the lands granted to him.

FIRE ORDEAL. See Ordeal.

FIREWORKS. It is not lawful for any person, to make or cause to be made, or sell or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; or to permit the same to be cast or fired from his house or other place thereto belonging, into any public street or road; or to throw or fire, or be aiding in throwing and firing the same, in any public street, house, shop, river, or highway; and every such offence shall be adjudged a common nuisance. 9 & 10 W. c. 7.

FIRST FRUITS AND TENTHS. First fruits are the profits of every spiritual living, for one year, and tenths, are the tenth part of the yearly value of such living, given anciently to the pope through all Christendom; but by stat. 26 H. VIII. c. 3, translated to the king here in England, for the ordering whereof there was a court erected, 32 H. VIII. c. 45, but again dissolved anno primo Marie. Sess. 2. c. 10. And since that time, though those profits be reduced again to the crown, by the stat. I. Eliz. c. 4, yet was the court never restored, but all matters therein went to be handled, mere transferred to the exchequer.

By stat. 26 H. VIII. the lord chancellor, bishops, &c. are empowered to examine into the value of every ecclesiastical benefice and preferment in their several dioceses; and every clergyman entered on his living, before the first fruits are paid or compounded for, is to forfeit double value. But stat. 1 Eliz. c. 4, ordains, that if an incumbent on a benefice do not live half a year, or is ousted before the year expire, his executors are to pay only a fourth part of the first fruits; and if he live the year and then die, or be ousted in six months after, but half the first fruits shall be paid; if a year and a half, three quarters of them; and if two years, then the whole; not otherwise. The archbishops and bishops, have four years allowed for the payment, and shall pay one quarter every year, if they live so long upon the bishopric.
other dignitaries in the church, pay theirs in the same manner, as rectors and vicars.

By 27 H. VIII. c. 8. no tenths are to be paid for the first year, as then the first fruits are due; and by several statutes of Anne, if a benefice be under fifty pounds per annum, clear yearly value, it shall be discharged of the payment of first fruits and tenths.

The queen also restored to the church, what at first had been thus indirectly taken from it, by remitting the tenths and first fruits entirely but by applying these superfluities of the larger benefices, to make up the deficiencies of the smaller; for this purpose she granted a charter, whereby all the revenue of the first fruits and tenths is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings under 50l. a year. This is usually called queen Anne's bounty, which has been still further regulated by subsequent statutes: though it is to be lamented that the number of such poor livings is so great, that this bounty extensive as it is, will be slow, and almost imperceptible in its operation; the number of livings under 50l. certified by the bishops, at the commencement of the undertaking, being 5597, the revenues of which, on a general average, did not exceed 23l, per annum. Black, 285, 286.

FISH. Any person may erect a fish pond without licence; because it is a matter of profit, and for the increase of victuals. 2 Inst. 199.

Concerning the right and property of fish, it has been held, that where the lord of the manor has the soil on both sides of the river, it is good evidence that he has the right of fishing; but where the river ebbs and flows, and is an arm of the sea, there it is common to all, and he who claims a privilege to himself must prove it. In the Severn, the soil belongs to the owners of the land, on each side; and the soil of the river Thames, is in the king, &c. but the fishing is common to all. 1 Mod. 105.

Any person who shall unlawfully break, cut, or destroy, any head or dam of a fish pond, or wrongfully fish therein, with intent to take or kill fish, shall, on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages, and after the expiration of the three months, shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 Eliz. c. 21.
If any person shall enter into any park or paddock, fenced in and enclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling house, in or through which park, or paddock, garden, orchard, or yard, any stream of water shall run, or wherein shall be any river, stream, pond, pool, moat, stew, or other water, and by any means or device whatsoever, shall steal, take, kill, or destroy, any fish bred or kept therein, without the consent of the owner thereof, or shall be aiding therein, or shall receive or buy any such fish, knowing them to be so stolen or taken as aforesaid, and shall be convicted thereof at the assizes, within six calendar months after the offence shall be committed, he shall be transported for seven years. And any offender, surrendering himself to a justice, or being apprehended or in custody for such offence, or on any other account, who shall make confession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended, and shall on trial give evidence, so as to convict such accomplice, shall be discharged of the offence, so by him confessed.

And if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river, or stream, pond, pool, or other water, (not in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling house, but in any other inclosed ground, being private property) he shall, on conviction before one justice, on the oath of one witness, forfeit 5l. to the owner of the fishery of such river, pond, or other water, and such justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other of the county or place, he shall immediately pay the said penalty of 5l. to such justice, for the use of the person, as the same is appointed to be paid unto; and in default thereof, shall be committed by such justice to the house of correction, for any time not exceeding six months, unless the forfeiture shall be sooner paid: or such owner of the fishery may, within six calendar months after the offence, bring an action for the penalty in any of the courts of record at Westminster. 5 G. III. c. 14.

FISHERMEN. There shall be a master, wardens, and assistants of the fishmongers company in London, chosen yearly, at the
next court of the lord mayor and aldermen after the 10th of June, who are constituted a court of assistants; and they shall meet once a month at their common hall, to regulate abuses in fishery, register the names of fishermen, and mark their boats, &c.

FISHING, right of. Fishery in navigable rivers, or arms of the sea, is common and public; it prima facie belongs to the crown, and the presumption is against any exclusive right; yet an exclusive right may be prescribed for; but the proof lies on the claimers of it. In private rivers not navigable, it belongs to the lords on each side. Bur. 2184.

FISH ROYAL, these are whale and sturgeon, which the king is entitled to, when either are thrown on shore, or caught near the coasts. Plowd. 315.

FLEET, a well known prison in London. To this prison none are usually committed, but for contempt of the king and his laws, or upon absolute command of the king, or some of his courts. Or lastly, upon debt, when men are unable or unwilling to satisfy their creditors.

FLIGHT, is evading the course of justice, by a man's voluntarily withdrawing himself. On an accusation of treason, or felony, or even petit larceny, if the jury find that the party fled for the same, he shall forfeit his goods and chattels, although he be acquitted of the offence; for the very flight itself is an offence, carrying with it a strong presumption of guilt, and is at least an endeavour to elude and stifle the course of justice prescribed by the law. But now the jury very seldom find the flight; such forfeiture being looked upon, since the vast increase of personal property, as too large a penalty for an offence, to which a man is prompted by the natural love of liberty. 4 Black. 387.

FLOTSAM, JETSAM, and LAGAN. Flotsam, is when a ship is sunk or cast away, and the goods float on the sea; jetsam, is when a ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and the ship notwithstanding perisheth; and lagan is, when the goods so cast into the sea, are so heavy that they sink to the bottom, and therefore the mariners fasten to them a buoy or cork, or such other thing that will not sink, to enable them to find them again. 5 Rep. 106. b. The king shall have flotsam, jetsam, and lagan, when the ship is lost, and the owner of the goods are not known; but not otherwise. F. N.
F. N. B. 122, where the proprietors of the goods may be known, they have a year and a day to claim flotsam. 1 Ke b. 657.

FOLKLAND, was such as was held by no assurance in writing, but distributed among the common folk, or people, at the pleasure of the lord, and resumed at his discretion; and was no other than villenage.

FOLCMOTE or FOLKMOTE, was a common council of the inhabitants of a city, town, or borough, convened at the moot hall or house. When this great assembly is made in a city, it may be called a burgemote; when in the county, a shiremote.

FORCE, in our common law, is most usually applied in its worst sense, signifying unlawful violence. Force is either simple or compound; simple force is that which is so committed, that it is accompanied by no other crime; as if one by force shall enter into another man's possession, without doing any other unlawful act: mixed or compound force, is that violence which is committed with such a fact, as of itself only is criminal: as if one by force enter into another man's possession, and kill a man, or ravish a woman there, &c.

All force is against law; and it is lawful to repel force by force. 1 Inst. 267.

Where a crime in itself capital, is endeavoured to be committed by force, it is lawful to repel that force, by the death of the party attempting. 4 Black. 161.

FORCEIBLE ENTRY AND DETAINER. Forceible entry, is a violent actual entry into a house or land, &c, or taking a distress of any person, weaponed, whether he offer violence or fear of hurt to any there, or furiously drive any out of the possession thereof. West Symbol. p. 2.

Where one or more persons, armed with unusual weapons, violently enter into the house or land of another; or where they do not enter violently, if they forcibly put another out of his possession; or if one enter another's house, without his consent, although the doors be open, &c. these are all forcible entries punishable by the law. Co. Lit. 257. So when a tenant keeps possession of the land at the end of his term against the landlord; it is a forcible detainer. 1 Haw. 145.

If any person be put out or disseised of any lands and tenements in a forcible manner, or put out peaceably, and after holden out A a 3 with
with strong hand, the party grieved shall have *assize of novel disseisin*, or writ of trespass against the disseisor; and if he recover (or if any alienation be made to defraud the possessor of his right, which is also declared by the statute to be void) he shall have *treble damages*, and the defendant shall also make fine and ransom to the king. 3 H. VI. c. 9.

But as this action is at the suit of the party, and only for the right, it lies only where the entry for the defendant was not lawful; for though a man enter with force, where his entry is lawful, he shall not be punished by way of action; but he may be indicted by the statute, for the indictment is for the force and for the king; and he shall make fine to the king, be his right ever so good. Dalt. c. 129.

He shall recover treble damages, as well for the mesne occupation, as for the first entry; and though he shall recover treble damages, he shall recover costs which shall be trebled also; for the word *damages*, includes costs of suit. 1 Inst. 257.

An indictment will lie at common law for a forcible entry, though generally brought on the statutes; but it must shew on the face of it sufficient actual force. 3 Bur. 1702.

If the party grieved will lose the benefit of his treble damages and costs, he may have the assistance of the justices at the general sessions, by way of indictment on the statute 8 H. VI. which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. Dalt. c. 129.

Forcible entry and detainer, is also punishable under the statute, by one justice of peace, and by *certiorari*. Dalt. c. 44.

**FORCIBLE MARRIAGE.** If any person shall take away any woman having lands or goods, or that is heir apparent to her ancestor, by force and against her will, and afterwards she be married to him, or to another by his procurement, or defiled; he, and also the procurers, and receivers of such a woman, shall be adjudged principal felons. And by 39 Eliz. c. 9, the benefit of clergy is taken away from the principals, procurers, and accessories before. And by 4 and 5 P. et M. c. 8, if any person shall take or convey away any unmarried woman, under the age of sixteen (though not attended with force), he shall be imprisoned two years, or fined, at the discretion of the court; and if he deflower
flower her, or contract matrimony with her without the consent of her parent or guardian, he shall be imprisoned five years, or fined in like manner. And the marriage of any person under the age of twenty-one, by licence, without such consent, is void.

FORECLOSED, barred, shut out, or excluded for ever; as the barring the equity of redemption on mortgages. See Mortgage.

FOREIGN COURTS, upon a principle of the law of nations, every state being free, independent, and uncontrollable, the sentence of any foreign court of competent jurisdiction, is not to be called in question, but is admitted as evidence of the fact upon which it is founded. If however, in such sentence any foreign jurisdiction should state the evidence, upon which its sentence or device is founded, subsequent evidence may be admitted to disprove such evidence, and consequently the sentence or decree which is a deduction from it. But where it is peremptorily given as a sentence, it is conclusive evidence, which the English courts will not allow to be questioned.

FOREIGNERS, are persons subject to a foreign state to which they owe an allegiance, and although made free denizens or naturalized in Great Britain, they are nevertheless expressly disabled by the act of settlement from bearing offices in the government, from being members of the privy council, or members of parliament. See Alien.

FOREIGN OPPOSER, or APPOSER, an officer in the exchequer, to whom all sheriffs, after they are apposed of their sums out of the pipe-office, repair to be apposed by him of their green wax. He examines the sheriff's estreats with the record, and apposeth the sheriff, what he says to every particular sum therein.

FOREIGN PLANTATIONS, a writ of error lies here upon any of their judgments in foreign plantations, or in any dominions belonging to England. Vaughan 402.

FOREIGN PLEA, a foreign plea is, where the action is carried out of the county where it is laid, and is to be sworn, which a plea to the jurisdiction is not. Carrth. 402.

FOREIGN SERVICE, is that whereby a mesne lord holds over of another, without the compass of his own fee. Or that which
which a tenant performs either to his own lord, or to the lord paramount out of the fee. Bracton, lib. 2. c. 16.

FOREIGN STATE, is the dominion of a foreign power. Thus, if any foreign subject purchase goods in London, and then depart privately to his own country, the owner of the goods may have a certificate from the Lord Mayor of London, on an affidavit being made of the sale and delivery of the goods, upon which the proper court in that state, will execute a legal process upon the party. At the instance of an ambassador also or consul, any criminal flying from justice to any foreign state, may be delivered up to the laws of the country where the crime was committed. Where any contract is made abroad, if the party be resident in England, it may be recovered by the English courts.

FOREJUDGED, a judgment, whereby a man is deprived, or put out of the thing in question.

FOREJUDGED THE COURT, is when an officer or attorney of the court, is expelled the same for some offence, or for not appearing to an action by bill filed against him; and in the latter he is not to be readmitted till he shall appear. 2 H. IV. c. 3. he shall lose his office and be forejudged the court.

FORESTS, are waste grounds belonging to the king, replenished with all manner of beasts of chase or venery, which are under the king's protection, for the sake of his royal recreation and delight; and to that end, and for preservation of the king's game, there are particular laws, privileges, courts and officers belonging to the king's forests. 1 Black. 279.

The forest courts are, the courts of attachments, of regard, of Swainmote, and of justice seat.

The court of attachments, is to be held before the verderers of the forest, once in every forty days, to enquire of all offenders against the king's deer, or covert for the same, who may be attached by their bodies, if found in the very act of transgression, otherwise by their goods; and in this court, the foresters are to bring in their attachments or presentments of vert and venison; and the verderers are to receive the same, and to inroll them, and to certify them under their seals, to the court of justice seat, or Swainmote; for this court can only inquire of but not convict offenders.
The court of regard, or survey of dogs, is to be held every third year, for the lawing or expeditating of mastiffs, which is done by cutting off the claws of the fore-feet, to prevent them from running after deer. No other dogs but mastiffs, were permitted to be kept within the king's forests, it being supposed that the keeping of these, and these only, was necessary for the defence of a man's house.

The court of Swainmote, is to be held before the verderers as judges, by the steward of the swainmote, thrice in every year, the swains or freeholders within the forest composing the jury.

The jurisdiction of this court, is, to enquire into the oppressions and grievances committed by the officers of the forest, and to receive and try presentments, certified from the court of attachments, against the offenders in vert and venison. And this court may not only enquire, but convict also; which conviction shall be certified to the court of justice seat; under the seals of the jury; for this court cannot proceed to judgment.

The court of justice seat, is the principal court, which is held before the chief justice in eyre, or chief itinerant judge, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchises, liberties, and privileges, and all pleas and causes whatsoever, therein arising. It may also proceed to try presentments made in the inferior courts of the forest, and to give judgment upon the convictions that have been made in the swainmote courts. It may be held every third year. This court may fine and imprison, it being a court of record. And a writ of error lies to the court of king's-bench. 1 Black, 239. 2 Black, 38. 3 Black, 71.

But the forest laws have long ago ceased to be put in execution. 1 Black 289.

FORESTALLING, is the buying or bargaining for any corn, cattle, or other merchandize, by the way, before it comes to any market or fair, to be sold; or by the way, as it comes from beyond the seas, or otherwise, towards any city, port, haven, or creek of this realm, to the intent to sell the same again at a higher price.

At the common law, all endeavours to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, whether by spreading false rumours, or
by purchasing things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 Haw. 234.

Several statutes, have from time to time, been made against these offences in general, which were repealed by 12 Geo. III. c. 71.

But though these offences are no longer combated by the statutes, they are still punishable upon indictment at the common law, by fine and imprisonment.

FORFEITURE, is a punishment annexed by law, to some illegal act or negligence in the owner of lands, tenements, or hereditaments; whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong which either he alone, or the public together with him have sustained. 2 Black. 267.

The offences which induce a forfeiture of lands and tenements, are principally the following: treason, felony, misprision of treason, praemunire, drawing a weapon on a judge; or striking any one in the presence of the king's court of justice, and popish recusancy, or non-observance of certain laws enacted in restraint of papists.

By the common law, all lands of inheritance whereof the offender is seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king on an attainder of high treason, although the lands are helden of another; for there is an exception in the oath of fealty, which saves the tenants allegiance to the king; so that if he forfeits his allegiance, even the lands he held of another lord, are forfeited to the king, for the lord himself cannot give of lands but upon that condition. Co. Lit. 8.

Also upon an attainder of petit treason or felony, all lands of inheritance, whereof the offender is seised in his own right, as also all rights of entry to lands in the hands of a wrong doer, are forfeited to the lord of whom they are immediately helden; for this by the feudal law was deemed a breach of the tenant's oath of fealty in the highest manner; his body with which he had engaged to serve the lord being forfeited to the king, and thereby his blood corrupted, so that no person could represent him; and all
all personal estates, whether they are in action or possession, which
the party has, or is entitled unto, in his own right, and not as ex-
cecutor or administrator, to another, are liable to such forfeiture in
the following cases:

1st. Upon a conviction of treason or felony.

But the lord cannot enter into the lands, holden of him upon
an escheat for petit treason or felony, without a special grant, till
it appear by due process, that the king hath his prerogative of
the year day and waste. *Stamf. P. C. 191.*

As to forfeiture of goods and chattels, it seems agreed that all
things whatsoever, which are comprehended under the notion of
a personal estate are liable to such forfeiture.

2nd. Upon a flight found before the coroner, on view of a dead
body.

3d. Upon an acquittal or a capital felony, if the party be found
to have fled. *2 Haw. 450.*

4th. If a person indicted of petit larceny and acquitted, be
found to have fled for it, he forfeits his goods as in cases of grand
larceny. *2 Haw. 451.* But the party may in all cases, except
that of the coroner's inquest, traverse the finding of the flight:
and it seems agreed, that the particulars of the goods found to be
forfeited, may also be traversed.

5th. Upon a presentment by the oaths of twelve men, that a
person arrested for treason or felony, fled from, or resisted those
who had him in custody, and was killed by them in the pursuit or
scuffle. *Id.*

6th. If a felon waive, that is leave any goods in his flight from
those who either pursue him, or are apprehended by him so to
do, he forfeits them, whether they are his own goods, or goods
stolen by him; and at common law, if the owner did not pursue
and appeal the felon, he lost the goods for ever: but by *21 H.
VIII. c. 11.* for encouraging the prosecution of felons, it is pro-
vided, that if the party came in as evidence on the indictment,
and attaint the felon, he shall have a writ of restitution. *4 Inst.
154.*

7th. If a man be *félo de se,* he forfeits his goods and chattels.
*5 Co. 109.*

8th. A convict within clergy forfeits all his goods, though he
be burnt in the hand; yet thereby he becomes capable of purchasing other goods. But, on burning in the hand, he ought to be immediately restored to the possession of his lands. 2 H. H. 388, 389.

The forfeiture upon an attainder of treason or felony shall have relation to the time of the offence, for the avoiding all subsequent alienation of the lands; but to the time of conviction, or fuga fecit found, &c. only as to chattels, unless the party were killed in flying from, or resisting those who had arrested him; in which case it is said, that the forfeiture shall relate to the time of the offence. Plowd. 438. See Corruption of Blood.

FORFEITURE IN CIVIL CASES, a forfeiture of copyhold by felling timber, was relieved in equity; but the lord-keeper declared, that in case of a wilful forfeiture he would not relieve; Chau. Cas. 96.

In case of a forfeiture, equity can relieve, where they can give satisfaction. 1 Salk. 156.

FORFEITURE OF MARRIAGE, a writ which anciently lay against him, who, by holding knights service, and being under age, and unmarried, refused her whom the lord offered him without his disparagement, and married another. F. N. B. 141.

FORGERY, is where a person counterfeits the signature of another, with intent to defraud; which by the law of England is made a capital felony.

A receipt to a cash memorandum, is not a receipt on acquittance for the payment of money within 2 Geo. II. c. 25. against forgery.

Forgery may be committed by making a mark in the name of another person.

It may also be committed in the name of a person who never had existence.

And it may be committed of an instrument, though such an instrument as the one forged does not exist either in law or fact.

Indorsing a real bill of exchange, with a fictitious name; is forgery; although the use of a fictitious name, was not essential to the negociation.

A forged bank-note (although the word pounds is omitted in the body of it), and there is no water-mark in the paper, is a counterfeit note for the payment of money.
Altering an entry of money received, made by a cashier of the bank, in the bank-book of a person keeping cash there, by prefixing a figure to increase the amount of the sum received, is forging a receipt for money.

A receipt indorsed on a bill of exchange in a fictitious name, is forgery, although such name does not purport to be the name of any particular person.

If a person, who has for many years been known by a name, which was not his own, and afterwards assume his real name, and in that name draw a bill of exchange, he will not be guilty of forgery, although such bill were drawn for fraudulent purposes.

If any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in the false making or counterfeiting any deed, will, bond, writing, obligatory, bill of exchange, promissory note for payment of money, acquittance, or receipt, either for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be false, forged, or counterfeited, he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or disherison of heirs. 2 Geo. II. c. 25.

Forging or imitating stamps to defraud the revenue, is forgery by the several stamp acts: and the receiving them is made single felony, punishable with seven years transportation. 12 Geo. III. c. 48.

FORISFAMILIARI, a son is properly said forisfamiliiari when he accepts of his father's part of his lands, and is contented with it in the life time of his father, so that he cannot claim any more.

FORM, is required in law proceedings, otherwise the law would be no art; but it ought not to be used to ensnare or entrap. 1 Black. 142.

The formal part of the law, or method of proceeding, cannot be altered but by parliament: for if once those outworks were demolished, there would be an inlet to all manner of innovation, in the body of the law itself. 1 Black. 142.

FORMA PAUPERIS, is when any person has cause of suit, and is so poor that he cannot support the usual charges of suing.
at law, or in equity. In this case, upon his making oath that he is not worth five pounds his debts being paid, and bringing a certificate from some lawyer, that he has just cause of suit, the judge admits him to sue in forma pauperis, that is without paying fees to counsellor, attornies, or clerk: and he shall have original writs and subpoenaas gratis. 11 H. VII. c. 12.

And he shall when plaintiff, be excused from costs, but shall suffer other punishment at the discretion of the judge. And it was formerly usual to give such paupers, if nonsuited, their election either to be whipped, or pay the costs; though the practice is now disused. 3 Black, 400.

It seems agreed, that a pauper may recover costs, though he pay none; for although the counsel and clerks are bound to give their labour to him, yet they are not bound to give it to his antagonist. Id.

FORMEDON, a real action which lies for the issue in tail after the death of the ancestor, or for him in remainder or reversion after the estate tail determined, and is called formedon, because the writ comprehends the form of the gift. Co. Lit. 326.

It is in the nature of a writ of right, and is the highest action that tenant in tail can have; for he cannot have an absolute writ of right, which is confined only to such as claim in fee simple; and for that reason this writ of formedon was granted him by the statute de donis. 13 Ed. I. c. 1. Booth. 139.

This writ is distinguished into three species; in the descender, in the remainder, and in the reverter.

A writ of formedon in the descender lies, where a gift in tail is made, and the tenant in tail aliens the land intailed, or is disseised of them and dies; in this case the heir in tail shall have this writ of formedon in the descender, to recover these lands so given in tail, against him who is then the actual tenant of the freehold.

A formedon in the remainder lies, where one giveth lands to another for life or in tail, with remainder to a third person in tail or in fee; and he who hath the particular estate dieth without issue inheritable, and a stranger intrudes upon him in the remainder, and keeps him out of possession; in this case, the remainder man shall have this writ of formedon in the remainder.

A formedon in the reverter lies, where there is a gift in tail, and
and afterwards by the death of the tenant in tail without issue of his body, the reversion falls in upon the donor, his heirs, or assigns; in such case, the reversioner shall have this writ to recover the lands. 3 Black. 191.

But these writs are now seldom brought, except in some special cases, where it cannot be avoided; the trial of titles by ejectment, is now the usual method; and is done with much less trouble and expense.

FORMER ACTION, in some cases a good plea to the bringing a new action.

The general rule is, that the party shall not be vexed twice for the same cause of action; but then it must appear, that the court first possessed of the cause, had jurisdiction; and nothing shall be intended to be within the jurisdiction of an inferior court, but what is averred so to be. Gibb. 314.

FORNICATION, the act of incontinency in single persons; for if either party be married, it is adultery; the spiritual court hath the proper cognizance of this offence; but formerly the courts leet had power to enquire of and punish fornication and adultery; in which courts the king had a fine assessed on the offenders, as appears by the book of Domesday. 2 Inst. 488.

FORPRISE, an exception or reservation.

FOOTGELD, or FOUTGELD, an amercement for not cutting out the balls of great dogs feet in the forest.

To be quit of footgeld, is a privilege to keep dogs within the forest, without punishment or controul.

FRACTION, the law makes no fraction of a day; and therefore if a person die of a wound he received, the year and day shall be computed from the beginning of the day on which the wound was given, and not from the precise minute or hour, 2 Hau. P. C. 163.

FRANCHISE, is taken for a privilege or exemption from ordinary jurisdiction, and sometimes an immunity from tribute; it is either personal or real, that is, belonging to a person immediately, or else by means of this or that place, or court of immunity, whereof he is either chief or a member Crompt. Jurisd. 141.

FRANK-ALMOIN, signifies a tenure or title of lands and tenements bestowed upon God, that is given to such people as de-
vote themselves to the service of God, for pure and perpetual alms; whence the feoffers or givers cannot demand any terrestrial service, so long as the lands, &c. remain in the hands of the feoffees. F. N. B. 211.

These donations in *frank-almoine*, are now out of use, as none but the king can make them; but they are expressly excepted by the stat. 12 C. II. c. 24. abolishing tenures, and therefore subsist in many instances at the present day. 2 Black. 101.

FRANK BANK. See Free Bench.

FRANK CHASE, is a liberty of free chase, whereby all men having lands within that compass, are prohibited to cut down any wood, &c. without the view of the forester, though it be in his own demesnes. *Cromp. Jurisd.* 187.

FRANK FEE, that which is in the hands of the king, or lord of any manor, being ancient demesne of the crown, is called a *frank fee*, and that which is in the hands of the tenant is ancient demesne only: whence that seems to be *frank fee*, which a man holds at the common law to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor. *Reg. Orig.* 12.

FRANK FIRM, lands or tenements, wherein the nature of fee, is changed by feoffment out of knight-service, for several yearly services; and whence neither, homage, worship, marriage, nor relief, may be demanded, nor any other service not contained in the feoffment. *Britt.* c. 66.

FRANK FOLD, is where the lord hath the benefit of folding his tenant's sheep within his manor, for manuring his land. *Kell. Rep.* 198.

FRANK LAW, the benefit of the common law of the land.

FRANK MARRIAGE, is a tenure in tail special, whereby the donees shall have the land to them and the heirs of their bodies, and shall do fealty to the donor, till the fourth degree.

FRANK PLEDGE, a pledge or surety for the behaviour of freemen, by a certain number of neighbours becoming bound for each other, to see each man of their pledge forthcoming at all times, to answer the transgression committed by any gone away: so that whoever offended, it was forthwith enquired in what pledge he was, and those of that pledge, either produced him within thirty-one days, or satisfied for his offence. 

FRANK
FRANK TENEMENT, a possession of freehold lands and tenements.

FRATERNITY, many persons united together in respect or mystery and business into a company, but their laws and ordinances cannot bind strangers, for they have not a local power of government. 1 Salk. 193.

FRATRIAGIUM. The inheritance of younger brothers, for whatever they possess of the father's estate, they possess in rationes fratriagii, and are to do homage to the elder brother for it, because he is bound to do homage for the whole to the superior lord. Brut, lib. 2. c. 5.

FRAUD. All deceitful practices in defrauding or endeavouring to defraud another of his own right, by means of some artful device, contrary to the plain rules of common honesty, are condemned by the common law, and punishable according to the heinousness of the offence. Co. Lit. 3.

The distinction laid down, as proper to be attended to in all cases of this kind, is this, that in such impositions or deceits, where common prudence might guard persons from the offence, it is not indictable, but the party is left to his civil remedy; but where false weights or measures are used, or false tokens produced, or such measures taken to defraud or deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable. Burv. 1120.

Persons convicted of obtaining money or goods by false pretences, or sending threatening letters to extort money or goods, may be punished by fine and imprisonment, or by pillory, whipping, or transportation. 30 G. H. c. 24.

FREE BENCH, is the widow's share of her husband's copyhold or customary lands, in the nature of dower, which is variable according to the customs in different places. In some manors it is one third, sometimes half, sometimes the whole, during her widowhood, of all the copyhold or customary land, which her husband died possessed of. In some places by custom she holds them only during her chaste virility.

FREE CHAPEL, is so called, from its being free or exempt from the jurisdiction of the ordinary. Most of the free chapels, were built upon the manors and ancient demesnes of the crown, whilst in the king's hands, for the use of himself and his retinue.
when he came to reside there. And when the crown parted with these estates, the chapels went along with them, and retained their first freedom. Black.

These chapels are visitable by the king, and not by the ordinary; which office of visitation is executed for the king by the lord chancellor. See Chapels.

FREEHOLD, may be in deed or in law. A freehold in deed, is actual seisin of lands or tenements in fee-simple, fee-tail, or for life. A freehold in law, is a right to such lands or tenements before entry or seizure.

So there is a seisin in deed, and a seisin in law: a seisin in deed, is when a corporal possession is taken; and a seisin in law, is where lands descend before entry, or where something is done which amounts in law to an actual seisin. 1 Inst. 31.

Tenant in fee-simple, or fee-tail for life, it said to have a freehold, so called, because it distinguishes it from terms of years, chattels upon uncertain interests, lands in villenage, or customary or copyhold lands. 1 Inst. 43.

A freehold cannot be conveyed to pass in futuro, for then there would be want of a tenant against whom to bring a precipe, and therefore, notwithstanding such conveyance, the freehold continues in the vendor: but if livery of seisin be afterwards given, the freehold from thence passes to the vendee. 2 Wils. 165.

A man is said to be seised of freehold, but to be possessed of other estates, as of copyhold lands, leases for years, or goods and chattels. See Estate and Fee-simple.

FREEHOLDERS, such as hold any freehold estate.

FREEMAN, is a term applied to certain members of a corporate city or town, who have either purchased their freedom, or acquired it by serving an apprenticeship, &c.

FREIGHT, is the consideration money agreed to be paid for the use or hire of a ship, or in a larger sense, the burthen of such ship.

The freight is most frequently determined for the whole voyage, without respect to time; sometimes it depends on time; in the former case it is either fixed at a certain sum for the whole cargo, or so much per ton, barrel, bulk, or other weight or measure, or so much per cent on the value of the cargo.

If a certain sum be agreed on for the freight of the ship, it must
must all be paid, although the ship when measured should prove less, unless the burthen be warranted. If the ship be freighted for transporting cattle or slaves at so much per head, and some of them die on the passage, freight is only due for such as are delivered alive; if for lading them, it is due for all put on board.

When a whole ship is freighted, if the master suffer any goods besides those of the freight to be put on board, he is liable for damages.

If the voyage be compleated according to the agreement, without any accident, the master has a right to demand the freight, before the delivery of the goods; but if such delivery is prevented by negligence, or accidents, the parties will be reciprocally responsible in the following manner.

If the merchant should not load the ship within the time agreed on, the master may engage with another and recover damages.

If the merchant recall the ship after she is laden, and sailed, he must pay the whole freight; but if he unload before the ship has actually sailed, he will in such case only be responsible for damages.

If the merchant load goods which are not lawful to export, and the ship be prevented from proceeding on that account, he must nevertheless pay the freight.

If the master be not ready to proceed on the voyage at the time stipulated, the merchant may load the whole or part of the cargo on board another ship, and recover damages, but any real casualties will release the master from all damages.

If an embargo be laid on the ship before she sail, the charter party is dissolved, and the merchant pays the expense of loading and unloading; but if the embargo be only for a short limited time, the voyage shall be performed when it expires; and neither party is liable for damages.

If the master sail to any other port than that agreed on, without necessity, he must sail to the port agreed on at his own expense, and is also liable for any damages in consequence thereof.

If a ship be taken by the enemy, and retaken or ransomed, the charter party continues in force.

If the master transfer the goods from his own ship to another, without necessity, and they perish, he is responsible for the full value,
value, and all charges; but if his own ship be in imminent danger, the goods may be put on board another ship at the risk of the owner.

If a ship be freighted out and home, and a sum agreed on for the whole voyage, nothing becomes due until the return of such ship.

If a certain sum be specified for the homeward voyage, it is due, although the correspondent abroad, should have no goods to send home.

A ship was freighted to a particular port and home, a particular freight agreed upon for the homeward voyage, with an option reserved for the correspondent to decline it, unless the ship arrived before a certain day. The master did not go to the port agreed on, and therefore became liable to damages; the obligation being absolute on his part, and conditional only on the part of the freighter.

If the goods be damaged without fault of the ship or master, the owner is not obliged to receive them and pay the freight, but he must either receive or abandon the whole; he cannot receive those that are not damaged, and reject the others.

If the goods be damaged through the insufficiency of the ship, the master is liable for the same; but if it be owing to stress of weather, he is not accountable.

If part of the goods be thrown overboard, or taken by the enemy, the part delivered pays freight.

The master is accountable for all the goods received on board by himself and mariners, unless they perish by the act of God, or the king's enemies.

The master is not liable for leakage of liquors, not accountable for contents of packages, unless packed in his presence.

FRESH FORCE, a force done within forty days. If a man be disseised of any lands or tenements, within any city or borough, or deforced from them after the death of his ancestor, to whom he is heir, or after the death of his tenant for life, or in tail; he may, within forty days after his title accrued, have a bill out of chancery to the mayor, &c.

FRESH SUIT, is such a ready and earnest following of an offender, as never ceases from the time, of the offence being committed or discovered, until he be apprehended. And the effect of
of this in the pursuit of a felon, is, that the party pursuing shall have his goods again, whereas otherwise, they are forfeited to the king. *Standf.* Pl. Cor. lib. 3, c. 10.

It seems to have been anciently holden, that to make a fresh suit, the party ought to have raised a hue and cry with all convenient speed, and also to have taken the offender; but at this day it seems to be settled, that if the party have not been guilty of gross neglect, but hath used all reasonable care and diligence in enquiring after, pursuing, and apprehending, the felon, he ought to be allowed to have made sufficient fresh suit, whether any hue and cry were levied or not, and whether such offender were taken by means of such pursuit, or without any assistance from it. 2 Haw. 169.

**FRUIT.** Every person who shall bark any fruit tree, shall forfeit to the party grieved, treble damages, by action at the common law; and also 10l. to the king. 37 H. VIII. c. 6.

Every person who shall rob any orchard or garden, or dig or pull up any fruit trees, with intent to take the same away (the same not being felony by the laws of this realm), shall, on conviction, before one justice, give to the party such satisfaction for damages, as such justice shall appoint; and in default of payment to be whipped. 43 Eliz. c. 7.

And with respect to what shall be deemed *felony* by the laws of this realm, the distinction seems to be, that if they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but trespass only, for a man cannot steal part of a freehold; but if they be severed from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a trespass only, but felony. Id.

Fine and imprisonment may be inflicted on persons destroying fruit trees. 1 G. I. c. 48.

Robbing orchards or gardens of fruit growing therein, may be punished by fine, whipping, &c.

**FUEL.** All faggots made for sale, shall contain in compass, beside the knot of the bond, twenty-four inches of assize; and every faggot stick within the bond, shall contain full three feet of assize, except only one stick to be but one foot long, to stop or harden the binding. 43 Eliz. c. 14.
All billets (except those made of beech) that lie exposed in the public places, where they are usually bought or sold, shall be assized and cut as directed by 9 Anne. c. 15.

FUGAM FECIT, is where it is found by inquisition, that a person fled for treason or felony; as to which it is agreed, that wheresoever a person found guilty by such inquest, either as a principal, or as an accessory before the fact, is found also to have fled for the same, he forfeits his goods absolutely, and the issues of his lands, till he be pardoned or acquitted.

But wherever the indictment against a man is insufficient, the finding a fugam fecit, will not hurt him; and that in all cases, the particulars of the goods found to be forfeited, may be traversed.

FUGITIVE'S GOODS, are the proper goods of him that flies, which after the flight lawfully found, belong to the king, or lord of the manor. 5 Co. Rep. 109. See Felon's Goods.

FUNERAL EXPENSES, are allowed previous to all other debts and charges; but if the executor or administrator be extravagant, it is a species of devastation or waste of the substance of the deceased, and shall only be prejudicial to himself, and not to the creditors or legates of the deceased. 2 Black. 508.

But in strictness, no funeral expenses are allowable against a creditor, except for the shroud, coffin, ringing the bell, parson, clerk, grave-digger, and bearers' fees, but not for pall or ornaments. 1 Salk. 190.

And in general it is said, that no more than 40s. in the whole for funeral expenses, shall be allowed against creditors. 3 Atk. 249.

FURBOTE, FYRBOTE, FIREBOTE, a liberty granted by the lord to his servant, to take underwood for fire.

FURCA, in ancient privileges, signified a jurisdiction of punishing felons, viz. the men with hanging, the women with drowning.

FURCAM ET FLAGELLUM, the meanest servile tenure, when the bondman was at the disposal of his lord, for life and limb.

FURGELDUM, a fine paid for theft.

FURTA, a privilege derived from the king, as prime lord, to
try, condemn, and execute thieves and felons within certain bounds.

FYRTHWITE, a fine for deserting the army.

G.

GAFOLD GYLD, signifies the payment or rendering of tribute or custom.

GAFOL-LAND, land liable to tribute or tax.

GAGE, to give security that a thing shall be delivered: for if he who distrained, being sued, hath not delivered the cattle that were distrained, then he shall not only avow the distress, but gage deliverance, that is, put in sureties that he will deliver the cattle distrained. F. N. B. 74.

GAINAGE, signifies the draft oxen, horses, wain, plough, and furniture, for carrying on the work of tillage by the baser sort of sokemen and villains; and sometimes the land itself, or the profit raised by cultivating it. Bract. Lib. 1. c. 9.

GAME. It is a maxim of the common law, that goods of which no person can claim any property, belong to the king by his prerogative. Hence those animals fera nature, which come under the denomination of game, are styled in our laws his majesty's game; and that which he has he may grant to another; in consequence of which another may prescribe to have the same, within such a precinct or lordship. And hence originated the right of lords of manors, or others, to the game within their respective liberties.

As the sole right of taking and destroying game belongs exclusively to the king, as such he may authorize the only persons who can acquire any property, however fugitive and transitory, in the animals coming under that denomination.

For the preservation of these species of animals, for the recreation and amusement of persons of fortune, to whom the king with the advice and assent of parliament, has granted the same, and to prevent persons of inferior rank from misemploying their time, the following acts of parliament have been made. The common people are not injured by these restrictions, no right being taken from
from them which they ever enjoyed; but privileges are granted to those who have certain qualifications therein mentioned, which, before rested solely in the king. 2 Bac. Abr. 612.

For the sake of perspicuity we have arranged the different acts of parliament in alphabetical order.

Certificates, to be dated the day of the month when issued, and shall be in force till the first of July following and no longer; and if any clerk of the peace, his deputy, or steward, clerk, &c. issue certificates otherwise than directed, to forfeit 20l. 25 G. III. Sess. 2.

No person to destroy game until he has delivered an account of his name and place of abode to the clerk of the peace, or his deputy, or to the sheriff, or steward clerk of the county, riding, shire, stewartry or place where such person shall reside, and annually take out a certificate thereof, which must have a stamp duty of three pounds three shillings. 25 G. III. Sess. 2.

Any person counterfeiting or forging any seal or stamp directed to be used by this act, with intent to defraud the revenue, or shall utter or sell such counterfeit, on conviction thereof shall be adjudged a felon, and shall suffer death without benefit of clergy; and all provisions of former acts relative to stamp duties, to be in force in executing this act. 25 G. III. Sess. 2.

Every qualified person, shooting at, killing, taking, or shooting, any pheasant, partridge, heath-fowl, or black game, or any grouse or red game, or any other game, or killing, taking, or destroying, any hare, with any greyhound, hound, pointe, spaniel, setting dog, or other dog, without having obtained such certificate, shall forfeit the sum of 20l. Id.

Clerks of the peace or their deputies, or the sheriff, or steward clerks, in their respective counties, ridings, shires, stewartries, or places, shall on or before November 1, 1785, or sooner if required by the commissioners of his majesty's stamp duties, transmit to the head office of stamps in London, a correct list in alphabetical order, of the certificates by them issued between the 25th day of March, in the year 1785, and the first of October in the same year; and shall also in every subsequent year, on or before the first of August in each year, make out and transmit to the stamp-office in London, correct alphabetical lists of the certificates so granted by them, distinguishing the duties paid on each respective
Certificate so issued, and on delivery thereof, the receiver general of the stamp duties shall pay to the clerk of the peace, &c. for the same, one halfpenny a name; and in case of neglect or refusal, or not inserting, a full, true, and perfect account, he shall forfeit 20l. Id.

Lists may be inspected at the stamp-office for 1s. each search; id. which lists shall once or oftener in every year, be inserted in the newspapers in each respective county.

If any qualified person, or one having a deputation, shall be found in pursuit of game, with gun, dog, or net, or other engine for the destruction of game, or taking or killing thereof, and shall be required to shew his certificate, by the lord or lady of the manor, or proprietor of the land whereon such person shall be using such gun, &c. or by any duly appointed game-keeper, or by any qualified, or certified person, or by any officer of the stamps, properly authorized by the commissioners, he shall produce his certificate: and if such person shall refuse, upon the production of the certificate of the person requiring the same, to shew the certificate granted to him for the like purpose; or in case of not having such certificate to produce, shall refuse to tell his christian and surname, and his place of residence, and the name of the county, where his certificate was issued, or shall give in any false or fictitious name, he shall forfeit 50l. Id.

Certificates do not authorize any person to shoot at, kill, take, or destroy, any game at any time that is prohibited by law, nor give any person a right to shoot at, &c. unless he be duly qualified by law Id.

No certificate obtained under any deputation, shall be pleaded or given in evidence, where any person shall shoot at, &c. any game out of the manors or lands for which it was given. The royal family are exempted from taking out certificates for themselves or their deputies. Id.

Conies. Destroying conies, transportation. 5 G. III. c. 14.
Robbing warrens, felony without clergy. 9 G. I. s. 22.
Killing them in the night, or endeavouring to kill them, fine of 10s. or commitment. 22 & 23 Car. II. c. 25.
Unqualified person using gun to kill them, same may be seized. 3 Jac. I. c. 18.

Deer. Stalking deer without leave 10l. 19 H. VII. c. 11.

Hunting
Hunting or killing them 10l. costs, and sureties for good behaviour. 5 Eliz. c. 21.

Buck stools or engines kept by unqualified persons may be seized. 3 Jac. I. c. 13.

Selling or buying them to sell again, 40l. 3 Jac. I. c. 27.

Coursing or killing them without consent, 20l. 13 Car. II. c. 10.

Hunting, taking, killing, or wounding, 30l. or transportation. 5 W. III. c. 10. 5 G. I. c. 15. 9 G. I. c. 22. 10 G. II. c. 32.

Destroying pales or walls of inclosed grounds, without consent, 30l. 5 G. I. c. 15.

Keeper of parks privately killing or taking them, 50l. 5 G. I. c. 15.

Robbing places where kept, felony without clergy. 9 G. I c. 22.

Game-keepers. All lords of manors or other royalties may appoint game-keepers, and empower them to kill game. 22 & 23 Car. II. c. 25.

But if game-keeper dispose of the game without the lord's consent, he shall be committed for three months, and kept to hard labour. 5 Anne c. 14.

But no lord shall make above one game-keeper within one manor, with power to kill game, and his names shall be entered with the clerk of the peace; certificate whereof shall be granted by clerk of the peace on payment of 10s. 6d. Unqualified game-keeper killing or selling hare, pheasant, partridge, moor, heath-game, or grouse, he shall forfeit 5l. by distress, or commitment for three months, for the first offence, and every other four. 9 Anne. c. 21.

No lord shall appoint unqualified game-keeper, or one who is not bona fide servant to such lord, or immediately employed and appointed to take and kill game for the sole use of the lord; other persons under colour of authority for taking and killing game, or keeping any dogs or engines whatsoever for that purpose, shall forfeit 5l. in like manner. 3 G. I. c. 11.

Every deputation of a game-keeper to be registered with clerk of the peace, or in the sheriff's or steward's court books of the county, &c. where the lands lie, and annually take out certificate thereof, stamped with an half-guinea stamp. 25 G. III. Sess. 2.

Every
Every game-keeper from and after the passing of this act, who shall deliver his name and place of abode as aforesaid, and require a certificate, shall be annually entitled thereto, stamped as before directed from clerk of the peace or his deputy, sheriff, or steward, clerk, &c. to the effect of the form in the act set forth. 1d.

Clerk of the peace, &c. after signing certificate, shall issue the same stamped, to the person registering the deputation, on requiring the same, for which he may receive one shilling. 1d.

If any person to whom any deputation or appointment of a game-keeper shall have been, or at any time thereafter shall be granted, by any lord or lady of a manor, &c. shall for the space of twenty days after the deputation or appointment shall be granted, neglect or refuse to register the same, and take out a certificate as aforesaid, shall forfeit and pay the sum of 20l. to be applied as the law directs. 1d.

Neglect, or refusal of issuing certificates, incurs a forfeiture of 20l. recoverable in the courts of Westminster, court of session, of justiciar, or exchequer in Scotland, by action of debt or information, for the use of the plaintiff with double costs of suit. 1d.

Clerk of the peace, &c. may issue his certificate, to any game-keeper first appointed in any year after 1st of July in that year. 1d.

If any lord or lady of a manor, or proprietor of land, shall make any new appointment of a game-keeper, and shall register the deputation with the clerk of the peace, &c. and shall obtain a new certificate thereon, the first shall be void; and any person acting under the same, after notice, shall be liable to all the penalties of the game-laws, and those against unqualified persons. 1d.

Hares. Every person tracing or coursing hares in the snow shall be committed for one year, 31 Eliz. c. 5. unless he pay to the churchwardens, for the use of the poor, 20 shillings for every hare, or become bound by recognizances, with two sureties in twenty pounds a piece, not to offend again; and every person taking or destroying hares with any sort of engine, shall forfeit for every hare, 20s. in like manner. 1 Jac. I. c. 27. Persons found using engines liable to the punishment inflicted, as above, by 31 Eliz. c. 5. Unqualified persons keeping or using shooting-dogs,
dogs, or engine to kill or destroy hares, shall forfeit 5l. to the informer, with double costs. 2 Geo. III. c. 19. by distress, or committed for three months for the first offence, and for every other four. 5 Anne. c. 14. Taking or killing hares in the night-time forfeit 5l. 9 Anne. c. 25. the whole to the informer with double costs. 2 Geo. III. c. 19. Killing, or taking with gun, dog, or engine, hare in the night, between the hours of seven at night, and six in the morning, from Oct. 12 to Feb. 12, and between the hours of nine at night and four in the morning, from Feb. 12, to Oct. 12, or in the day-time upon Sunday or Christmas-day, to forfeit, not less than 10l. nor more than 20l. for the first offence; nor less than 20l. nor more than 30l. for the second offence; and 50l. for the third offence, with costs and charges; and, upon neglect or refusal, be committed for six or twelve calendar months, and may be publicly whipped: final appeal to the quarter-sessions. 13 Geo. III. c. 80. Persons armed and disguised stealing them, felony without clergy. Geo. I. c. 22. Higler, chapman, carrier, inn-keeper, victualler, or alehouse-keeper, having in his custody, or buying, selling, or offering to sale, any hare, unless sent up by some person qualified, or any person selling, exposing or offering for sale hares, &c. 28 Geo. II. c. 22.) shall forfeit for every hare 5l. the whole to the informer. 2 Geo. III. c. 92.

Heath-fowl, for preserving heath-cocks or polts, no person whatsoever, on any waste, shall presume to burn, between Feb. 2 and June 24, any grig, ling, heath, furze, goss, or fern, on pain of commitment for a month, or ten days, to be whipped and kept to hard labour. 4 & 5 W. & M. c. 23. Shooting heath-cocks, grouse, or moor-game, contrary to 1 Jac. I. c. 27. and killing any of them in the night, or using gun, dog, or engine, with such intent, contrary to 9 Anne. c. 25. and 13 Geo. III. c. 80. and carriers and others having such in their possession, contrary to 9 Anne. c. 14. are all liable to the same penalties, and recoverable in the same manner as those offences are subjected to shooting, &c. hares.

Partridges, taking partridges by nets or other engines, upon another's freehold, without special leave of the owner of the same, penalty 10l. half to him who shall sue, and half to the owner or possessor. 11 H. VII. c. 17. Shooting, &c. at partridges, with gun or bow, or taking them, &c. with dogs or nets, by 7 Jac
Jac. I. c. 11. or taking their eggs out of their nest, liable as persons shooting, &c. at hares, and also 20s. for every bird or egg. Selling, or buying to sell again, a partridge (except reared and brought up in houses, or from beyond sea) forfeit for every partridge 10s. half to him who will sue, and half to the informer. 1 Jac. I. c. 27. Taking, killing, or destroying partridges in the night, forfeits for every partridge 10s. half to him who will sue and half to the lord of the manor, unless he licence, or cause the said taking or killing, in which case his half shall go to the poor, recoverable by churchwarden; and if not paid in ten days, to be imprisoned for one month; and moreover shall give bond to the justice, with good sureties, not to offend again for two years, 23 Eliz. c. 10. To kill a partridge in the night, penalty 5l. 9 Anne. c. 25. The whole whereof is given to the informer, 2 Geo. III. c. 19. and may be recovered within three months. 5 Anne. c. 14. before a justice of peace, or within six months, by action in the courts of record at Westminster, 9 Anne. c. 25. with double costs. 2 Geo. III. c. 19. Keeping or using any greyhounds, setting dogs, or any engine for destroying partridges, penalty 5l. to be levied and recovered as the like penalty for killing hares. Penalties for using gun, dog, snare, net, or other engine, with intent to take or destroy partridges in the night, or on Sunday, or Christmas-day, same as using them against hares; by 13 Geo. III. c. 80. Carriers and others having partridges in their possession, liable to the same forfeitures, and penalties as having hares; and the same law against shooting them as for shooting hares.

Pheasants. All the laws respecting the penalties and recovery of them, for taking them by nets, snares, or other engines, without licence of the owner, by 11 H. VIII. c. 17. and for shooting or destroying them with dogs or snares, &c. by 7 Jac. I. c. 11. or taking their eggs by 1 Jac. I. c. 27. and for selling, and buying them to sell again, by last cited act (except that the penalty for a pheasant is 20s.) and for destroying them in the night (except as aforesaid) by 23 Eliz. c. 10. 9 Anne. c. 25. and 13 Geo. III. c. 80. and for keeping or using sporting dogs or engines for destroying them on Sunday or Christmas-day, by 13 Geo. III. c. 80. and for carriers and others having them in their possession; all these

C c 3. laws
laws are mutatis mutandis, verbatim, the same as those respecting partridges.

**Prosecutions.** Any one prosecuted for any thing done in pursuance of this act, may plead the general issue, and give the special matter in evidence for his defence; and if upon trial, verdict pass for the defendant, or plaintiff become nonsuited, defendant shall have treble costs of plaintiff. 25 Geo. III. sess. 2. s. 28.

**Qualifications,** for killing game, are 1. having a freehold estate of 100l. per annum, 22 & 23 Car. II. c. 25. 2. A leasehold estate for 99 years, of 150l. per annum. 3. The eldest son or heir apparent to an esquire, or person of superior degree. 4. The owner or keeper of a forest, park, chase, or warren. Unqualified person, keeping dogs or engines, to destroy game to forfeit 5l. 5 Anne. c. 14.

No person (other than the king's son) unless he have lands of freehold to the value of five marks a year, shall have any game of swans, on pain of forfeiting them, half to the king, and half to any person, so qualified, who shall seize the same. 22 Ed. IV. c. 6.

Any gentleman or other that may dispense 40s. a year freehold, may hunt and take wild fowls with their spaniels only, without using a net or other engine, except the long bow. 25 H. VIII. c. 11. From persons not having lands of 40s. a year, or not worth in goods 200l. using gun, or bow to kill deer, any person having 100l. may seize the same to his use. 3. Jac. I. c. 13.

Every person qualified to kill game, shall previous to his shooting at, killing, or destroying any game, take out a certificate. See Certificate.

**Sporting Seasons.** The time for sporting in the day, is from one hour before sun rising, until one hour after sun setting. 10 Geo. III. c. 19.

For Bustards, The sporting season is, from December 1st to March 1st.

For Grouse, or red grouse, from August 11 to December 10. Hares may be killed all the year, under the restriction, in 10 Geo. III. c. 19.

Heath-fowl, or black game, from August 20 to December 20.
Partridges, from September 1 to February 12.

Phoehasants, from October 1 to February 1.

Widgeons, wild ducks, wild geese, wild fowls, at any time but in June, July, August, and September.

Summary Proceedings, from and after March 1, 1785, in all cases where the penalty by this act, doth not exceed 20l. justice of peace shall, upon information or complaint, summon the party and witnesses to appear, and proceed to hear and determine the matter in a summary way, and upon due proof by confession, or upon the oath of one witness, give judgment for the forfeiture; and issue his warrant for levying the same on the offenders goods, and to sell them, if not redeemed within six days, rendering to the party the overplus; and if his goods be insufficient to answer the penalty, shall commit the offender to prison, there to be for six calendar months, unless the penalty be sooner paid; and if the party be aggrieved by the judgment, he may, upon giving security amounting to the value of the forfeitures, with the costs of the affirmance, appeal to the next general quarter-sessions, when it is to be heard and finally determined; and in case the judgment be affirmed, the sessions may award such costs, incurred by the appeal, as to themselves shall seem meet. 25 Geo. III. sess. 2.

Witnesses neglecting or refusing to appear, without reasonable excuse, to be allowed of by the justice, shall respectively forfeit for every offence 10l. to be levied and paid as other penalties by this act. Id.

Justice to cause conviction to be made out, to the effect of the form set forth in the act. Id.

Justice may mitigate penalties as he thinks fit, so that reasonable costs and charges of the officers, and informers, for discovery and prosecution, be always allowed, over and above mitigation, and so as the same does not reduce the penalties to less than a moiety, over and above the costs and charges, any thing therein contained to the contrary notwithstanding; and no such conviction shall be removeable by certiorari into any court whatsoever.

No offender against this act to be imprisoned more than three months. Id.
The duties to be paid to the receiver-general of the stamp duties, and by him paid into the exchequer. *Id.*

Swans, it is felony to take any swans that be lawfully marked, though they be at large; and so it is unmarked swans, if they be domestical or tame, so long as they keep within a man's manor, or within his private river, or if they happen to escape from them, and are pursued and taken, and brought back again; but if they be abroad, and attain their natural liberty, then the property of them is lost, and so long felony cannot be committed by taking them. *Burn's Just. tit. Game.*

Wild fowl, same laws against shooting wild fowl as for shooting hares, by 1 Jac. I. c. 27.

**GAMING,** from the destructive and pernicious consequences, which must necessarily attend excessive gaming, both the courts of law and equity have shewn their abhorrence of it; but the playing at cards and dice, &c. when practised innocently and as a recreation, the better to fit a person for business, is not at all unlawful, nor punishable as any offence whatsoever. 2 Vent. 175.

And as the gaming in the manner as has been mentioned, may be lawful, yet if a person be guilty of cheating, as by playing with false cards, dice, &c. he may be indicted for it at common law, and fined and imprisoned according to the circumstances of the case, and heinousness of the offence. 2 Bac. Abr. 620.

Also all common gaming-house, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. 1 Hau. 198.

It was therefore by 16 Car. II. c. 7. enacted, that if any person of what degree soever, shall by any fraud, unlawful device, or other ill practice, in playing at cards, dice, tables, tennis, bowls, skittles, shuffle-board, or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes, game or games whatsoever, or bearing a share or part in the stakes, or by betting on both sides of such as shall play, act, ride, or run as aforesaid, win or obtain to himself any sum of money or other valuable things, he shall forfeit treble the value; half to the king, and half to the party grieved, or who shall lose the money or thing so won or obtained, (provided:
(provided he shall sue in six months) otherwise to any other person who shall sue in one year next after the said six months, by action of debt, bill, plaint, or information, in any of the courts of record at Westminster, with treble costs.

And by 9 Anne. c. 14, it is further enacted, that if any person do or shall, by any fraud or shift, cosenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, or any of the games aforesaid, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire, to himself or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, or shall at any time or setting, win of any more person or persons whatsoever, above the sum of ten pounds; that then, every person or persons so winning by such ill practice as aforesaid, or winning at any one time or setting, above the said sum or value of ten pounds; and being convicted of any of the said offences, upon an indictment or information to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other things so won as aforesaid; and in case of such ill practice as aforesaid, shall be deemed infamous, and shall suffer such corporal punishment, as in case of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid. Id.

And any person who shall at any time or setting, by playing at cards, dice, tables, or other game or gains whatsoever, or by betting on the sides of such as do play, lose to any one or more persons so playing or betting, in the whole, the sum or value of ten pounds, and shall pay or deliver the same, or any part thereof, the person so losing and paying, or delivering the same, shall be at liberty within three months then next, to sue for and recover the same, with costs, in any court of record; and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same, and treble value, with costs, half to the person who will sue for the same, and half to the poor of the parish where the offence shall be committed. Id.

And every person who shall be liable to be sued for the same, shall be obliged to answer on oath such bill as shall be preferred against
against him, for discovering the sum of money or thing so won. *Id.*

If any person shall play at cards, dice, tables, tennis, bowls, skittles, shuffle-board, or any other pastime, game or games whatsoever, other than with and for ready money, or shall bet on the sides of such as shall play, or shall lose any sum or other thing exceeding 100l. at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same when he shall so lose it, he shall not in such case be bound to make it good, but the contract, or contracts for the same, and for every part thereof, and all assurances and securities for the same shall be void and of no effect; and the winner shall forfeit treble value, of all such sums or other things as he shall so win above 100l. half to the king, and half to him who shall sue, within one year, in any of the courts of record at Westminster, with treble costs.

16 Car. II. c. 7.

And all notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, where the whole or any part of the consideration of such securities and conveyances shall be for money or other valuable things won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever; or by betting on the sides of such as do game at any of the games aforesaid; or for the reimbursing or repaying of any money knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall, during such play so play or bet, shall be utterly void, frustrate and of none effect. And where such securities shall be of lands, tenements, or hereditaments, or such as incumber and affect the same; they shall enure and be to the sole use and benefit of, and devolve upon such person as should or might have such lands, in case the said grantor, or person so incumbering the same had been dead: and all grants or conveyances to hinder them from devolving on such person shall be deemed fraudulent and void. 9 Anne. c. 14.

If any person shall win at play, or by betting, at any one time, the sum or value of ten pounds, or within the space of twenty-four hours, the sum or value of twenty pounds, he shall be liable to be indicted for such offence in six months, either in the king's bench, or at the assizes; and being convicted, shall be fined five times
times the value of the sum won or lost; which after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence; shall go to the poor.

And if one offender shall discover another, so that he be convicted, the discoverer shall be discharged from all penalties on account of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same. 18 Geo. III. c. 34.

Any two justices may cause to come or to be brought before them, every person whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such person do not make it appear to the said justices, that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for the space of twelve months; and in default of his finding such securities shall commit him to the common goal till he shall find such securities as aforesaid.

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sum or sums of money, or other thing or things, exceeding in the whole the value of 20s. such playing shall be deemed a forfeiture of the recognizance.

In order to prevent such quarrels as may happen on account of gaming; if any person shall assault and beat, or challenge to fight, any other person whatsoever, on account of any money won by gaming, playing, or betting, at any one of the games aforesaid, he shall on conviction thereof by information or indictment, forfeit to the king, all his goods, chattels, and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common goal of the county where the conviction shall be had, during the term of two years. 9 Anne. c. 14.

If any person who shall be licensed to sell any sorts of liquors, or who shall sell, or suffer the same to be sold, in his house, outhouse, ground, or apartment thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle-boards, miskissipi, or billiard-tables, skittles, nine-pins, or with any other implement of gaming in his house, outhouse, ground, or apartment thereto belonging, by any journeymen, labourers, servants,
or apprentices; and shall be convicted thereof on confession, or oath of one witness, before one justice, within six days after the offence committed, he shall forfeit for the first offence 40l., and for every other offence 10l. by distress, by warrant of such justice, three-fourths to the churchwardens for the use of the poor, and one-fourth to the informers. 30 Geo. I. c. 24.

GANG DAYS, days for perambulation of the boundaries of parishes.

GARBLING. The office of garbling spices, &c. with all the fees and profits thereof, is granted to the mayor and citizens of London; and all spices and drugs are to be cleansed and garbled before sold, on pain of forfeiting the same, or the value.

GARNISHEE, the party in whose hands money is attached, within the liberties of the city of London, so used in the sheriff of London's court, because he has had garnishment or warning not to pay the money, but to appear and answer to the plaintiff creditor's suit.

GARNISHMENT, a warning given to one for his appearance, for the better furnishing of the cause and court.

GARTER, the ensign of a noble order of knights, called Knights of the Garter, or Saint George, which is superior to all others.

This order consists of twenty-six distinguished persons, of whom the king of England is the sovereign, and the rest are either nobles of the realm, or princes of foreign countries, friends and allies of this kingdom.

GABEL, tribute, toll, custom, yearly rent, payment, or revenue.

GABELET, an ancient and special kind of cessavit used in Kent, where the custom of gavel kind continues, whereby the tenant shall forfeit his lands and tenement to the lord, of whom he holds, if he withdraw from him his rent and services.

GAVELKIND, of the many opinions concerning the original of this custom, the most probable seems to be, that it was first introduced by the Roman clergy, and therefore propagated more extensively in Kent, because there the Christian religion was first propagated. This tenure is reckoned by the best antiquaries, to be the same with the Saxon Bockland, which was alodial, and exempt from the feudal service. 2 Bac. Abr. 637.

Gavelkind is a tenure or custom annexed and belonging to
lands in Kent, whereby the lands of the father are equally divided at his death among all his sons; and in more ancient times still, amongst all the children, male and female. But now all or most of these lands both in Kent and Wales, are by several acts of parliament disgeneralled, and made descendible according to the common laws.

One property of gavelkind, was, that it did not escheat in case of an attainder and execution for felony.

GAUGER, is an officer appointed in different parts of the kingdom, to ascertain the contents of exciseable commodities.

The commissioners or sub-commissioners, in their respective circuits and divisions, may constitute under their hand and seals as many gaugers as are needful. 12 Car. II. c. 21.

GAZETTE, the only authentic paper published by royal authority. Dissolution of partnerships, commissions of bankruptcy, legal notices by advertisement, proclamations relative to the shutting up the ports, quarantine, embargoes, suspension or continuation of bounties, are all inserted in the gazette, which is considered as legal notice to all those whom it concerns.

GOAL, goals are of such universal concern to the public, that none can be erected by any less authority than an act of parliament. 2 Inst. 705.

All prisons and goals belong to the king, although a subject may have the custody or keeping of them. 2 Inst. 100.

The justices of the peace at their general quarter-sessions, or the major part of them, provided that such major part shall not be less than seven, upon presentment made by the grand jury at the assizes, of the insufficiency, inconvenience, or want of repair of the goal, may contract for the building, repairing, or enlarging the same, together with the yards, courts, and outlets thereof, and adding such other building, and making such conveniences as shall be thought requisite; or for erecting any new goal within any distance not exceeding two miles from the scite, and in that case for selling the old goal and the scite thereof, and also the materials of the old goal; the contractors giving security to the clerk of the peace for the performance of the contract. 24 Geo. III. c. 54.

The expense of building, rebuilding, repairing, or enlarging...
such goals, and such other necessary incidental expenses as aforesaid, shall be paid out of the county rate; and when the account of such expense, shall exceed half the amount of the ordinary annual assessment for the county rate (to be computed at a medium for the last preceding five years), the justices in sessions may borrow in mortgage of the said rates, any sum not less than 50l. nor exceeding 100l. and may order the growing interest and so much of the principal sum as shall be equal at least, to such interest, to be paid off yearly, till the whole thereof shall be discharged, and an account thereof shall be kept in a book provided for that purpose; and such book shall be delivered into court at every quarter-sessions, to be inspected by the justices, who shall make such orders relating thereto as to them shall seem meet. Provided that the whole sum of money borrowed, be fully paid within fourteen years from the time of borrowing it. -Id.

As there are several persons confined in the county and city goals, under sentence and orders made by one or more justices at their sessions, or otherwise, upon conviction in a summary way without the intervention of a jury; it is therefore by 24 Geo. III. c. 56. enacted, that any judge of assize, or two justices, within whose jurisdiction such goal is situate, may remove such persons to any house of correction within the same jurisdiction, there to be confined, and to remain in execution of such sentence or order.

For the relief of prisoners in goals, justices of the peace in sessions have power to tax every parish in the county, not exceeding 6s. 8d. per week, leviable by constables, and distributed by collectors, &c. 12 Car. II. c. 29.

But it is observed by Lord Coke, that the goaler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance. 1 Inst. 295.

If any subject of this realm shall be committed to any prison, for any criminal, or supposed criminal matter, he shall not be removed from thence, unless it be by habeas corpus, or some other legal writ; or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity; on pain that the person signing any warrant for such removal, and he who executes
executes the same, shall forfeit to the party grieved 100l. for the first offence, and 200l. for the second, &c.

GOAL, or PRISON BREAKING, at the common law was felony, for whatever cause the party was imprisoned; but by 1 Ed. II. st. 2. the severity of the common law is mitigated, which enacts, that no person shall have judgment of life or member, for breaking prison, unless committed for some capital offence; so that, unless the commitment be for treason or felony, the breaking of prison is not felony, but is otherwise punishable as a misdemeanor only, by fine and imprisonment. 4 Black. 130.

Any place whatever, wherein a person under a lawful arrest for a supposed crime, is restrained of his liberty, whether in the stocks or street, or in the common goal, or the house of a constable, or a private person, is a prison in this respect, for a prison is nothing else but a restraint of liberty; and therefore this extends as well to a prison in law, as to a prison in deed. 2 Inst. 589.

He that breaks prison, may be proceeded against for such a crime, before he be convicted of the crime for which he is committed; because the breach of prison is a distinct independent offence; but the sheriff's return of a breach of prison, is not a sufficient ground to arraign a man without an indictment. 2 Haw. 197.

It is not sufficient to indict a man generally for having feloniously broken prison; but the case must be set forth specially, that it may appear that he was lawfully in prison, and for a capital offence. 2 Inst. 591. Hale's P. C. 109.

GOALER, besides the duties enjoined goalers by act of parliament, and the abuses for which by statute they are punishable, the common law subjects them to fine and imprisonment, as also to the forfeiture of their offices, for gross and palpable abuses in the execution of their offices. 2 Inst. 381.

Also goalers are punishable by attachment, as all other officers are, by the courts to which they more immediately belong, for any gross misbehaviour in their offices, or contempt of the rules of such courts, and punishable by any other courts for disobeying writs of habeas corpus awarded by such courts, and not bringing up the prisoner at the day prefixed by such writs. 2 Haw. 151.
If the goaler, by keeping the prisoner more strictly than he ought, occasion the prisoner's death, this is felony in the goaler by the common law. Therefore if a prisoner die in goal, the coroner ought to sit upon him; and if the death were occasioned by cruel and oppressive usage on the part of the goaler, or any officer of his, it will be deemed wilful murder in the person guilty of such duress. 3 Inst. 91.

But if a criminal endeavouring to break goal, assault the goaler, he may be lawfully killed by him in the affray. Jenk. 23. 1 Haw. 71.

A goaler is considered as an officer relating to the administration of justice, and is under the same special protection of the law, that other ministers of justice are. If a person threaten him for keeping a prisoner in safe custody, he may be indicted, and fined and imprisoned for it. 2 Rot. Abr. 71.

If in the necessary discharge of his duty he should meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, he is not obliged to retreat as far as he can with safety, but may freely and without retreating, repel force with force: and if the party so resisting, happen to be killed, this will be justifiable homicide in the goaler, or his officer, or any person coming in aid of him. On the other hand, if the goaler, or his officer or any person in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance; for it is homicide in defiance of the justice of the kingdom. Post. 321.

The justices in their sessions, or in any special adjournment held for such express purpose, may, if they shall think it necessary or proper, appoint salaries or allowances to goalers, in lieu of the profits derived from the sale of liquors, as to them shall seem meet, and order the same to be paid out of the county rate, by a certificate of such allowance being signed by the chairman of the sessions: but no chairman shall sign such certificate, unless notice of such intended application, signed by the clerk of the peace, have been given fourteen days at least, before the holding of such session, or adjournment thereof, by two several advertisements, in some newspaper, which shall be printed and circulated in such county. 24 Geo. III. c. 54.

It seems clearly agreed, that a goaler by suffering voluntary escapes
escapes, by abusing his prisoners, by extorting unreasonable fees from them, or by detaining them in goal after they have been legally discharged, and paid their just fees, forfeits his office; for that in the grant of every office it is implied, that the grantee execute it faithfully and diligently. Co. Lit. 233.

GOAL DELIVERY, by the law of the land, that men might not be long detained in prison, but might receive full and speedy justice, commissions of goal delivery are issued out, directed to two of the judges, and the clerk of assize associate; by virtue of which commission, they have power to try every prisoner in the goal, committed for any offence whatsoever.

GELD, a fine or compensation for an offence.

GEMOTE, an assembly.

GENERAL ISSUE, is that which traverses and denies at once, the whole declaration, without offering any special matter whereby to evade: and it is called the general issue, because, by importing an absolute and general denial of what is alleged in the declaration, it amounts at once to an issue; that is, a fact affirmed on one side, and denied on the other. 3 Black. 305.

GENEROSA, seems of late to be a good addition; for if a gentlewoman be named Spinster in any original writ, appeal, or indictment, she may abate, and quash the same. 2 Inst. 688.

GENTLEMAN, according to Sir Edward Coke, is one who bears coat-armour, the grant of which adds gentility to a man's family. 2 Inst. 667.

GIFT, a transferring the property in a thing from one to another without a valuable consideration; for to transfer any thing upon a valuable consideration, is a contract or sale: he who gives any thing is called the donor; and he to whom is given is called the donee.

By the common law, all chattels real or personal may be granted or given, without deed, except in some special cases; and a free gift is good without a consideration, if not to defraud creditors. Park. 57.

But no leases, estates, or interests, either of freehold, or term of years, or any uncertain interest, not being copyhold or customary interest, of, in, to, or out of, any messuages, manors, lands, tenements, or hereditaments, shall at any time, be assigned, granted, or surrendered, unless it be by deed or not in writing signed.
signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law. 29 Car. II. c. 3.

A gift of any thing without a consideration, is good; but it is revocable before delivery to the donee, of the thing given. Jenk. 109. pl. 9.

GILD, is a compensation or fine for a fault.

GILD MERCHANT, was a certain privilege or liberty granted to merchants, whereby they were enabled among other things, to hold certain pleas of land within their own precincts; such as the gild merchant granted by king John to the burgesses of Nottingham.

GIST of action, is the cause for which the action lieth; the ground and foundation thereof, without which it is not maintainable.

GLASS, by several statutes, regulations are made for making, importing, and exporting glass, which is to be under the management of the officers of the customs and excise. See Complete Abridgement of the Excise Laws.

GLEANING, it hath been said, that by the common law and custom of England, the poor are allowed to enter and glean upon another ground after the harvest, without being guilty of trespass; and that this humane provision seem borrowed from the mosaiical law. 3 Black. 212.

But it is now positively settled, by a solemn judgment of the court of common pleas, that a right to glean in the harvest field, cannot be claimed by any person at common law; neither have the poor of a parish, legally settled such a right. 1 H. Black. Rep. 51. 63.

GLEBE, GLEBELAND, is a portion of land, meadow, or pasture, belonging to, or parcel of the parish or vicarage, over and above the tithes. Godolph. Rep. 409.

Glebe lands in the hands of the parson, shall not pay tithes to the vicar; nor being in the hands of the vicar, shall they pay tithe to the parson. Deggs. Pars. Couns. c. 2.

By stat. 28. H. VIII. c. 11, every successor on a month's warning, after induction, shall have the mansion house, and the glebe belonging thereto, not sown at the time of the predecessor's death.
He that is instituted, may enter into the glebe land before induction, and has right to have it against any strangers. *Roll. R.* 192.

**GOOD ABEARING,** an exact carriage or behaviour of a subject to the king and his liege people, to which men of evil course of life, or loose demeanour, are sometimes bound.

**GOOD BEHAVIOUR**, surety for the good behaviour, is the bail or pledge for any person, that he shall do or perform such a thing; as surety for the peace, is the acknowledging a recognizance or bond to the king, taken by a competent judge of record, for keeping the king's peace. *Boll. R.* c. 192.

GOOD BEHAVIOUR, an exact carriage or behaviour of a subject to the king and his liege people, to which men of evil course of life, or loose demeanour, are sometimes bound.

**GOOD BEHAVIOUR**, surety for the good behaviour, is the bail or pledge for any person, that he shall do or perform such a thing; as surety for the peace, is the acknowledging a recognizance or bond to the king, taken by a competent judge of record, for keeping the king's peace. *Boll. R.* c. 116.

A binding to the good behaviour, is not by way of punishment; but it is to shew, that when a man has broken the good behaviour, he is not to be trusted. *12 Mod.* 566.

Justices of peace may chastise rioters, barretors, and other offenders, and also imprison and punish them according to law, and by discretion and good advisement; and also bind persons of evil fame to the good behaviour, &c. *34 Ed.* III. c. 1.

This statute being penned in such general words, seems in a great measure to have left it to the discretion of justices of the peace, to determine what persons should be bound to their good behaviour; and consequently seems to empower them, not only to bind over those, who seem to be notoriously troublesome, and likely to break the peace, as Eves-droppers, &c. but also those who are publicly scandalous, or contemners of justice, &c. as haunters of bawdy-houses, or keepers of lewd-women in their own houses, common drunkards, or those who sleep in the day, and go abroad in the night, or such as keep suspicious company, or such as are generally suspected as robbers, or such as speak contemptuous words of inferior magistrates, as justices of peace, mayors, &c. not being in the actual execution of their offices; or of inferior officers of justice, as constables, &c. being in the actual execution of their office; but it seems that rash, quarrelsome, or unmannersly words, spoken by one private person to another, unless they directly tend to a breach of the peace, are not sufficient cause to bind a man to his good behaviour. *1 Haw.* 153.

**GOVERNMENT**, an orderly power constituted for the public good, to maintain order, distribute justice, &c.

Government, may be reduced to three kinds: the government of
GRANT,

GR.

one, the government of the many, or the mixture of the two, which makes a third. The first is termed absolute monarchy; the second, republican; and the third mixed monarchy. But the experience of past times has taught us, that a mixed monarchy is that, which unites the advantages wished to be attained in the most complete manner of any.

GRAND DAYS, are those days in every term, which are solemnly kept in the inns of court and chancery, such as Ascension Day, &c.

GRAND DISTRESS, a writ which lies in two cases, either when the tenant or defendant is attached, and so returned, and appears not but makes default, then a grand distress is to be awarded; or else when the tenant or defendant hath once appeared, and after makes default, then this writ lies by the common law, in lieu of a petit cape.

GRAND JURY, the sheriff of every county is bound to return, to every commission of oyer and terminer and of goal delivery, and to every session of the peace, twenty-four good and lawful men of the county, some out of every hundred, to inquire, present, do, and execute, all those things, which on the part of our lord the king, shall then and there be commanded them. They ought to be freeholders; but to what amount is not limited by law. Upon their appearance, they are sworn upon the grand jury, to the amount of twelve at the least, and not more than twenty-three, that twelve may be a majority.

They are not only to hear evidence on behalf of the prosecution; for the finding of an indictment is only in the nature of an enquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to enquire, upon their oaths, whether there be sufficient cause, to call upon the party to answer it. & Black. 302. & 303.

GRAND SERJEANTRY, is when a person holdeth his lands of the king by such services as he ought to do in person; as to carry the king's banner, or his lance, or to carry his sword before him at his coronation, or to do other like services; and it is called grand serjeantry, because it is a greater and more worthy service, than the service in the common tenure of socage. Lit. 153.

GRAND LARCENY, See Larceny.
GRANT, a gift in writing of such a thing, as cannot aptly be passed or conveyed by word only.

A grant is the regular method, by the common law, of transferring the property of incorporeal hereditaments, or such things whereof no livery of seisin can be had. For which reason all incorporeal hereditaments, as lands and houses, are said to be in livery; and the others as advowsons, commons, services, rents, reversions, and such like lie in grant. He that granteth, is termed the grantor; and he to whom the grant is made, is termed the grantee. A grant differs from a gift in this; that gifts are always gratuitous, grants, are upon some consideration or equivalent. 2 Black. 440.

GREENCLOTH, of the king's household, so termed from the green cloth on the table; it is a court of justice composed of the lord-steward, treasurer of the household, comptroller, and other officers, to whom is committed the government and management of the king's court, and the keeping of the peace within the verge.

GREEN-WAX, signifies the estreats of fines, issues, and amercements in the exchequer, under the seal of that court made in green-wax, to be levied in the county.

GUARDIAN, a guardian is one appointed by the wisdom and policy of the law, to take care of a person and his affairs, who by reason of his imbecility and want of understanding is incapable of acting for his own interest; and it seems by our law, that his office originally was to instruct the ward in the arts of war, as well as those of husbandry and tillage, that when he came of age he might be the better able to perform those services to his lord, whereby he held his own land. 2 Bac. Abr. 672.

There are several kinds of guardians, as, guardian by nature, guardian by the common law, guardian by statute, guardian by custom, guardian in chivalry, guardian in socage, and guardian by appointment of the Lord Chancellor.

Guardian by nature, is the father or mother; and here it should be observed, that by the common law every father hath a right of guardianship of the body of his son and heir, until he attain to the age of twenty-one years. Co. Lit. 84.

This guardianship extends no further than the custody of the infant's person. 1 Inst. 84.
It yields as to the custody of the person, to guardianship in soccage, where the title to both guardianships concur in the same individuals. 1 Inst. 388, b.

But guardianship in soccage ending at 14, it seems that after that age, the father or other ancestor, having a like title to both guardianships, becomes guardian by nature till the infant's age of 21. Carth. 384.

Lastly the father may disappoint the mother, and other ancestors, of the guardianship by nature, by appointing a testamentary guardian under the statutes 4 & 5. P. et. M. and 12 Car. II.

Guardian by nature, hath only the care of the person and education of the infant, and hath nothing to do with his lands merely in virtue of his office; for such guardian may be, though the infant have no lands at all, which a guardian in soccage cannot. Co. Lit. 38.

Guardian by the common law. If a tenant in soccage die, his heir being under fourteen, whether he be his issue or cousin, male or female, the next of blood to the heir, to whom the inheritance cannot descend, shall be guardian of his body and land till his age of fourteen; and although the nature of soccage tenure be in some measure changed from what it originally was, yet it is still called soccage tenure, and the guardian in soccage is still only where lands of that kind, as most of the lands in England now are, descend to the heir within age; and though the heir after fourteen may choose his own guardian, who shall continue till he is twenty-one, yet as well the guardian before fourteen, as he whom the infant shall think fit to choose after fourteen, are both of the same nature, and have the same office and employment assigned to them by the law, without any intervention or direction of the infant himself; for they were therefore appointed, because the infant in regard of his minority, was supposed incapable of managing himself and his estate, and consequently derive their authority not from the infant, but from the law; and that is the reason they transact all affairs in their own name, and not in the name of the infant, as they would be obliged to do, if their authority were derived from him. Co. Lit. 38.

Hence the law has invested them, not with a bare authority only, but also with an interest till the guardianship ceases; and to prevent their abuse of this authority and interest, the law has made
made them accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit; and therefore are not to have any thing to their own use, as the guardian in chivalry had. Co. Lit. 90. a.

Guardian by statute, by the common law, no person could appoint a guardian, because the law had appointed one, whether the father were tenant by knight service, or in socage. 3 Co. 37.

The first statute that gave the father a power of appointing, was the 4 & 5 P. & M. c. 8, which provides under severe penalties, such as fine and imprisonment for years, that no one shall take away any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession, custody, or governance, and against the will of the father of such maid or woman child, or of such person or persons to whom the father of such maid or woman child, by his last will and testament, or by any other act in his life time, hath or shall appoint, assign, bequeath, give, or grant the order, keeping, education and governance of such maid or woman child. 1 Sid. 362.

In the construction of this statute, the following opinion has been holden.

That a testamentary guardian, or one formed according to this statute, comes in loco parentis, and is the same in office and interest with a guardian in socage, and differs only as to the modus habendi, or in a few particular circumstances; as first that it may be held for a longer time, viz, till the heir attain the age of twenty-one, where before it was but fourteen; secondly it may be by other persons held, for before it was the next of kindred not inheritable, could have it; and now who the father names shall have it. Vaugh. 178.

Guardian by custom. By the custom of the city of London, the custody and guardianship of orphans under age, unmarried, belongs to the city. 2 Bac. Abr. 675.

By the custom of Kent, where any tenant died, his heir within age, the lord of the manor might and did commit the guardianship to the next relation within the court of justice, in whose jurisdiction the land was; but the lord was bound on all occasions to call him to account; and if he did not see that the accounts were fair, the lord himself was bound to answer it. This province the
the lord chancellor hath taken from inferior courts, only in Kent, where these customs are continued.

Guardian in Chivalry. by the common law, if tenant by knight-service had died, his heir male being under the age of twenty-one years, the lord shall have the land holden of him, till such heir had arrived at that age, because till then he was not intended to be able to do such service; and such lord, had likewise the custody of the body of the infant, to bring him up, and inure him to martial discipline, and was therefore called guardian in chivalry. Co. Lit. 74.

Guardian in Socage. Guardians in socage are also called guardians by the common law. Wardship is incident to tenure in socage, but of a nature very different from that which was formerly incident to knight-service: for if the inheritance descend to an infant under fourteen, the wardship of him does not, nor ever did belong to the lord of the fee; because in this tenure, no military or other personal service being required, there was no occasion for the lord to take the profits in order to provide a proper substitute for his infant tenant. Co. Lit. 84.

Guardian by appointment of the Lord Chancellor. It is not easy to state how this jurisdiction was acquired; it is certainly of no very ancient date, though now indisputable: for it is clearly agreed, that the king as pater patriae, is universal guardian of all infants, idiots, and lunatics, who cannot take care of themselves; and as this care cannot be exercised otherwise than by appointing them proper curators or committees, it seems also agreed, that the king may as he has done, delegate the authority to his chancellor; and that therefore at this day, the court of chancery is the only proper court, that hath jurisdiction in appointing and removing guardians, and in preventing them and others, from abusing their persons or estates. 2 Inst. 14.

And as the court of chancery is now vested with this authority, hence in every day's practice we find that court determining, as to the right of guardianship, who is the next of kin, and who the most proper guardian; as also orders are made by that court on petition or motion, for the provision of infants during any dispute therein; as likewise guardians removed or compelled to give security; they and others punished for abuses committed on infants,
and effectual care taken to prevent any abuses intended them in their persons or estates; all such wrongs and injuries being reckoned a contempt of that court, that hath by an established jurisdiction, the protection of all persons under natural disabilities. 2 Mod. 177.

GUARDIAN OF THE CINQUE PORTS, a principal magistrate who hath the jurisdiction of those havens in the east part of England, which are called the Cinque Ports. See Cinque Ports.

GUARDIAN OF THE SPIRITUALITIES, is he to whom the spiritual jurisdiction of any diocese is committed, during the vacancy of the see. The archbishop is guardian of the spiritualities, on the vacancy of any see within his province; but when the archiepiscopal see is vacant, the dean and chapter of the archbishop's diocese are guardians of the spiritualities.

GUEST, a lodger or stranger in an inn, &c. action lies against an innkeeper refusing a guest lodging, &c.

GUILD, a fraternity or company.

GUILD-RENTS, rents payable to the crown by any guild or fraternity, or such rents as formerly belonged to religious guilds, and came to the crown at the general dissolution ordered by sale by 22 Car. II. c. 6.

GUNPOWDER AND COMBUSTIBLES. No person shall make gunpowder but in the regular manufactories established at the time of making the stat. 12 Geo. III. c. 61, or licensed by the sessions, pursuant to certain provisions, under forfeiture of the gunpowder and 2s. per lb. nor are pestle mills to be used under a similar penalty.

Only 40 lbs. of powder to be made at one time under one pair of stones, except Battle-powder, made at Battle and elsewhere in Sussex.

Not more than 40 cwt. to be dried at one time in one stove; and the quantity only required for immediate use to be kept in or near the place of making, except in brick or stone magazines, 50 yards at least from the mill.

Not more than 25 barrels to be carried in any land carriage, nor more than 200 barrels by water, unless going by sea or coastwise, each barrel not to contain more than 100 lbs.

No dealer to keep more than 200 lbs. of powder, nor any person not a dealer, more than 50lb. in the cities of London or Westminster.
minister, or within three miles thereof, or within any other city, borough, or market-town, or one mile thereof, or within two miles of the king's palaces or magazines, or half a mile of any parish-church, on pain of forfeiture, and 2s. per lb. except in licensed mills, or to the amount of 300lbs. for the use of collieries, within 200 yards of them.

GYPSIES. See Egyptians.

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HABEAS CORPORA, a writ which lies for the bringing in of a jury, or so many of them as refuse to come upon the venire facias, for the trial of a cause brought to issue.

HABEAS CORPUS, a writ, which a man indicted of a trespass before justices of the peace, or in a court of franchise, and being apprehended for the same, may have out of the king's-bench, to remove himself thither at his own costs, and to answer the cause there.

This is the most celebrated writ in the English law. Of this there are various kinds made use of by the courts at Westminster, for removing prisoners from one court into another, for the more easy administration of justice.

The most efficacious of which writs, in all manner of illegal confinement, is that of habeas corpus ad subjiciendum, which is the subject's writ of right, in cases where he is aggrieved by illegal imprisonment, or any unwarrantable exercise of power.

This writ is founded upon common law, and has been secured by various statutes, of which the last and most efficacious, was the 31st Car. II. c.2. which is emphatically termed the habeas act. This act may justly be deemed a second magna charta.

By this important statute it is enacted, that on complaint in writing, by or on behalf of any person committed and charged with any crime (unless committed for felony or treason expressed in the warrant, or as accessory, or on suspicion of being accessory before the fact to any petit treason or felony plainly expressed in the warrant, or unless he be convicted or charged in execution by legal process). The lord chancellor, or any other of the twelve